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LAW OF LIMITATION IN INDIA,

BY

CUDDALORE RAMACHENDRIER,

ACTING HEAD ASSISTANT COLLECTOR, TRICHINOPOLY;

AUTHOR OF THE MANUAL OF MALABAR LAW

AND THE INDIAN REGISTRATION ACT,

WITH NOTES.

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Madras:

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TO
THE HONORABLE
P. P. HUTCHINS, B.L.,
MEMBER OF THE LEGISLATIVE COUNCIL OF MADRAS.

THIS VOLUME
IS
(By kind permission)
VERY RESPECTFULLY DEDICATED.

P R E F A C E.



THE OBJECT in publishing this book is to place within the reach of the Judges and the Practitioners of India the decisions of all the High Courts in the country on the Law of Limitation, arranged under their appropriate Sections and Articles. Wherever there was a conflict in the decisions of the Courts upon any point, I have enumerated them, as I have done in my Registration Act, with notes, bearing in mind the direction of each High Court to its subordinate tribunals to follow its own decisions, notwithstanding the decisions of the other High Courts to the contrary. With a view to facilitate reference to the rulings without putting readers to the necessity of referring to the Law Reports for information, I have stated briefly the facts of cases, many as abstracts and a few as extracts, and added any important observations made by Judges on questions of construction and application. To render the volume a book of reference complete in itself, I have inserted as foot-notes sections of the Civil Procedure Code and provisions of other Acts to which reference has been made in some of the sections and Articles of the Limitation Act.

The amendments proposed by Bill No. 23 of 1886, even if it becomes law, will in no way detract from the value of this publication, for they consist mainly in the repeal of Articles 171, 171-a and 172-b of the second schedule, and the proposed alterations will be found noted in their appropriate places.

This book would have been published at an earlier date had it not been for the untimely and lamented death, on the 5th of January, 1887, in my residence, at Madras, of my younger brother, C. Subbaroya Iyer, B.A., B.L., for several years one of the Judges of the Sudder Court of Cochin Circar. Referring to his death, the Dewan of the State says:—"My grief is shared by all his friends in these parts, and almost all who knew him deplore his death. In him, the Circar has lost a valued officer, and I have lost a sincere friend."

My thanks are due to my brother, Mr. C. Mahadava Iyer, B.A., B.L., a Vakil of the Madras High Court, for his having, in addition to his professional work, undertaken to correct the proof sheets, and for a few valuable suggestions as to the general arrangement of the contents of the book.

MADRAS, *March*, 1887.

C. R.

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INTRODUCTION.

REGULATION III of 1793, section 14, introduced the limitation of twelve years in Bengal; clause 2, section 3, Regulation II of 1805, allowed 60 years for all claims of Government, and clause 4 excluded from the Regulation relating to limitation, suits for redemption of property, moveable or immoveable. The provisions of clause 4, section 3 of Regulation II of 1805, were "provided further that no length of time shall be considered to establish a prescriptive right of property or to bar the cognizance of a suit for the recovery of property in case of mortgage or deposit, wherein the occupants of the land or other property may have acquired or held possession thereof as mortgagee or depositary only, without any proprietary right: nor in any other case whatever, wherein the possession of the actual occupant or of those from whom his occupancy may have been derived shall not have been under a title *bonâ fide* believed to have conveyed a right of property to the possessor."

2. Clause 4, section 18, Regulation II of 1802, of Madras, prescribed one uniform period of twelve years for suits, whether to recover possession of lands or debts, but did not affect suits for redemption or claims on mortgages which were left to be determined by the laws of the country. Clause 4 of the said Regulation ran as follows:—"The Courts of Adawlut are prohibited from hearing, trying or determining the merits of any suit whatever, against any person or persons, if the cause of action shall have risen twelve years before any suit shall have been commenced on account of it, unless the complainant can show by clear and positive proof that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money; or that he directly preferred his claim within that period, for the matter in dispute to a court of competent jurisdiction or person having authority

Old Regulations.

Bengal Regulation prescribed twelve years for suits, 60 years for Government claims and excluded redemption suits.

Madras Regulation prescribed one uniform period of twelve years for suits whether for lands or debts, but did not affect redemption suits or claims on mortgages.

(whether local or otherwise for the time being) to hear such complaint, to try the demand, and shall assign satisfactory reasons to the court why he did not proceed in the suit, or shall prove that either from minority, or other good and sufficient cause, he was precluded from obtaining redress. But from this rule are excepted, all claims founded on bonds which shall have been in a course of payment by instalments, or of which any proportion shall have been paid within twelve years previous to the institution of the suit; and also all claims and mortgages, the period for rendering which absolute and unactionable is to be determined by the laws of the country."

When the above Regulation was in force, twelve years' rule was applied to mortgagees not in possession, and to mortgagor allowing time to lapse after discharge of debt by usufruct and mortgagee's refusal to surrender.

3. When the above Regulation was in force, the twelve years' rule was applied to mortgagees not in possession, and to a mortgagor allowing time to lapse after the debt had been discharged by the usufruct and mortgagee's refusal to surrender. Suit by mortgagor was held to date not from mortgage, but from time limited for redemption. The right of redemption of a usufructuary mortgage was held not affected by the Statute, and the mortgagee in possession, where no time for payment was specified, was held not limited to time in suing for his debt. These were the decisions of the late Sudder Court. *Vide* Sloan's Code, page 12.

4. In *Mukkani v. Manan*,⁽¹⁾ the Madras High Court held that, prior to 1859, there was no limitation for redemption suits.

Bombay
Regulation V of 1827, was Law of Limitation and prescription.

5. In Bombay, Regulation V of 1827, section 1, was law both of Limitation and prescription. It laid down 30 years as the period within which a suit for immoveable property might be brought. It also provided that 30 years' adverse possession gave the possessor of such property proprietary right except in case of fraud.

Allahabad.

6. In *Dia Chand v. Sarafaraz*,⁽²⁾ the Allahabad High Court have observed that there was no limitation to suits for redemption of mortgage of landed property prior to Act XIV of 1859.

(1) I. L. R., 5 Mad., 182. | (2) I. L. R., 1 All., 425.

7. In the Towns of Calcutta, Madras and Bombay, the Law of Limitation in force in 1852 was the English Statute, 21, Jas. I., c. 16, and it continued to be in force till it was repealed. The Statute 21, Jas. I., c. 16, was intitled; "An Act of Limitation of actions, and for avoiding suits in law," and the words used in section 3, were "that all actions for account," "all actions of debt grounded upon any lending or contract without specialty," &c., should be brought within six years next after the cause of such actions. The Statute of James I. remained in force in the said three Towns till the passing of Act XIV of 1859. *Abba Haji Ishmail v. Abba Thara*.⁽¹⁾ In *Her Highness Ruckmaboyee v. Lulloobhoy*,⁽²⁾ the Privy Council recognised that the English Statute of limitations extended to India and applied to Hindus and Mahomedans as well as Europeans, in civil actions, in the Supreme Court.

English Statute prevailed in the Towns of Calcutta, Madras and Bombay until XIV of 1859 began to operate.

8. Act XIV of 1859 was passed on the 5th of May, 1859, and it was to have operated, by section 18, from May, 1861, but the operation was postponed to 1st January, 1862, by Act XI of 1861, which was passed on the 1st May, 1861. The preamble of the Act recited that "it is expedient to amend and consolidate the laws relating to the limitation of suits," and the Act prescribed the several periods of 1, 3, 6, 12, 30 and 60 years for suits of several descriptions. One year for suits for pre-emption, for penalties, for damages not affecting immoveable property, for wages, and for setting aside sales effected in execution of decrees of court and for arrears of Revenue and for setting aside summary orders; three years for suits for money lent, for breaches of contract unregistered, for rents, for hire and for recovery of property comprised in possessory awards; six years to all suits not specially provided for, twelve years for suits relating to immoveable property and for specialties governed by English Law and to suits for legacies. All suits for redemption instituted from 1st of January, 1862, were governed by the limitations contained in clause 15, section 1 of this Act, which provided for redemption of

Act XIV of 1859 providing "for the limitation of suits" began to operate from 1st January, 1862.

It prescribed the several periods of 1, 3, 6, 12, 30 and 60 years for suits of several descriptions.

(1) I. L. R., 1 Bom., 253. | (2) 5 Moore Ind. App., 234.

It gave unlimited time to suits against trustees for breach of trust. It prescribed for an extension of time in favour of a plaintiff in five cases.

It was purely an Act of Limitation only.

It superseded the Regulations and began to operate in Presidency Towns.

It did not extinguish the right.

Act IX of 1871, for the limitation of "suits and for other purposes" came into force on the 1st July 1871.

moveable and immoveable property within 30 and 60 years respectively, from the time of the mortgage or from the date of the acknowledgment of the mortgagor's title. Sec. 2 gave unlimited time to suits against trustees and their representatives for breach of trust. The Act also provided for extension of time in favor of the plaintiff in the following cases. (1), written acknowledgment of liability to pay a debt or legacy signed by the defendant, section 4; (2), concealed fraud of the defendant, section 9; (3), legal disability of the plaintiff including married woman in cases to be decided by English Law, minors, idiots and lunatics, section XI; (4), defendant's absence from British India, section XIII; and (5), ineffectual proceedings of a suit prosecuted *bond fide* but in a wrong court or in a court which had no jurisdiction, section 14. This Act was purely an Act of Limitation only.

Section 24 of the above Act provided for the Act taking effect throughout the Presidencies of Bengal, Madras and Bombay, including the Presidency Towns and Straits Settlement. This Act superseded the Bengal and Madras Regulations and as it prescribed a shorter period of limitation, namely, twelve years for suits relating to immoveable property, while the Bombay Regulation V of 1827, laid down 30 years as the period, the Act was held to repeal by implication the Regulation so far as it related to limitation. The Privy Council in *Fattehsangji v. Desai Kallianraji*,⁽¹⁾ observed that the Regulation, so far as it related only to the acquisition of a title by positive prescription, seemed to be unaffected by Act XIV of 1859, and to stand unrepealed in the Presidency of Bombay. Act XIV of 1859 did not extinguish the right.

9 Act IX of 1871 repealed Act XIV of 1859, and came into force on the 1st of July, 1871. The preamble recited that "it is expedient to consolidate and amend the law relating to the limitation of *suits, appeals and certain applications to courts*." Bayley, J., in *Abba Haji Ishmail*,⁽²⁾ observes: "These words are more comprehensive than

(1) L. E., 1 Ind. App., 34, 51. |

(2) I. L. R., 1 Bom., 258.

those used in Act XIV of 1859, which, no doubt, is to be accounted for by the fact that, when Act IX of 1871 was passed, the Civil Procedure Code was in force, and the High Courts had been established. We should therefore naturally expect to find greater reference to the phraseology of the Civil Procedure Code in Act IX of 1871 than in Act XIV of 1859, and so we find reference to 'suits, appeals and applications' in the preamble, and again in section 4. Thus, again, the second schedule of the Act embraces three distinct divisions, *viz.*, suits, appeals and applications. The first division contains 150 descriptions of suits."

10. Act IX of 1871 introduced amendments suggested by the decisions of Courts upon the Act of 1859, and the Legislature, for the purpose of facilitating the application of the law, appended to the Act three schedules, containing respectively, the different sorts of suits, appeals and applications, together with their respective periods of limitation and the points of time from which such periods were to run. Amendments relating to acknowledgments and payments were introduced by sections 20 and 21, by providing that, in order to give a new starting point, acknowledgment must be made before the expiry of the period of limitation, while section 4 of Act XIV of 1859 did not require such acknowledgment to be made within the statutory period. Part V of schedule 2 introduced a limitation of two years for suits for compensation for losing or injuring goods, &c., and for suits for the recovery of a wife and for the restitution of conjugal rights.

11. This Statute (IX of 1871), enacted for the first time two sets of provisions, which are in their nature distinct. One related to the limitation of suits, and prescribed the limitation of time for bringing suits after the right to sue had arisen, while the other set related to the manner of acquiring title and rights by possession and enjoyment. The latter provisions were contained in Part IV of the Act, and were introduced under the heading "acquisition of ownership by possession." The object of the Statute was to make more easy the establishment of rights by

Bayley, J., observes that as C. P. C. was in force when Act IX of 1871 was passed, it is natural to find in it greater reference to the phraseology of the Code than in Act XIV of 1859.

Act IX of 1871 introduced amendments suggested by court's decision and appended three schedules of suits, appeals and applications respectively to facilitate the application of the law.

Act IX of 1871, contained two distinct sets of provisions, one of limitation, and the other of prescription.

The object of the Statute was to make more

easy the establishment of rights by 30 year's enjoyment under the conditions prescribed by the Act.

Act does not exclude other titles or modes of acquiring easements.

This Act for the first time provided for extinction of right at the expiry of the statutory period.

State of the law in Bombay up to the introduction of Act IX of 1871.

Twelve years' adverse possession did not extinguish right.

In Bengal decisions held that such possession extinguished the title also.

allowing an enjoyment of 20 years if exercised under the conditions prescribed by the Act, to give, without more, a title to easements. The Lords of the Privy Council in *Maharanee Rajroop Koer v. Syed Abdool Hossein*,⁽¹⁾ observe : "The Statute is remedial, and is neither prohibitory nor exhaustive. A man may acquire a title under it who has no other right at all, but it does not exclude or interfere with other titles and modes of acquiring easements." This Act for the first time provided that the right to land or hereditary office shall be extinguished at the expiry of the statutory period for a suit for possession thereof.

12. Up to the introduction of Act IX of 1871, which for the first time, by section 29, provided for the extinction of right to land after the statutory period, and which expressly repealed the Bombay Regulation V of 1827, the state of the law in Bombay was this,—a person, who, without title had been in adverse possession of any real property for twelve years could, under Act XIV of 1859, resist any suit brought to recover it from him; but no such possession short of 30 years could create a title in his favor under Regulation V of 1827, section 1. The proprietor's title therefore did not become extinguished by twelve years' adverse possession of another, though his right of suit against that other became barred by Act XIV of 1859. If such person happened to lose his possession and the proprietor to regain it, the former, unless he sued within six months for possession simply on the ground of improper dispossession, must fail in any suit to eject, the latter having no title to stand upon. But in Bengal, the Privy Council held that twelve years' adverse possession not only barred the remedy, but extinguished the title because there was no such Regulation prevailing there as in Bombay. See *Rambhat Agnihotri v. The Collector of Poona*,⁽²⁾ which was instituted in 1872 to recover lands which originally belonged to H. H. Scindia, and which was proved to have been in plaintiff's family actually and constructively from 1841 to 1863, when, by mistake, it

(1) *Suth. P. C. Vol. III, p. 816.* | (2) *I. L. R., 1 Bom., 592.*

passed into the possession of Scindia and remained with His Highness till 1872, when it passed into the possession of the British Government by exchange.

13. Section 1 provided against the application of the provisions contained in sections 2 and 3, or in Parts II and III to suits instituted before the 1st of April, 1873. This postponement, which was intended to give timely notice of its provisions, led to conflicting decisions as to the application of the new Act after 1st of April, 1873. In *Chinnasami Iyengar v. Gopalacharya*,⁽¹⁾ plaintiff sued on the 26th January, 1874, on a Pro-note of 16th January, 1871, payable on demand. The claim had not been barred under Act XIV of 1859, on the 1st of April, 1873, when Act IX of 1871 came into force. The Madras High Court held that the period of limitation ought to be computed as it would have been under Act XIV of 1859, from the date of the note and not from the time of demand under Article 72 of Act IX of 1871. This implied the principle that Act IX of 1871, was not applicable to suits although instituted since the 1st of April, 1873, if founded upon causes of action which accrued before that date. Dissenting from that decision the Bombay High Court in *Abdul Karim v. Manji Hansraj*,⁽²⁾ held that Act IX of 1871 was from the 1st of April, 1873, applicable to suits subsequently brought upon causes of action which had accrued previous to that date, and which had not been barred under the previous enactment, as well as to suits upon causes of action which accrued afterwards.

14. In *Teagaroya Mudaly v. Mariappa Pillay*,⁽³⁾ plaintiff sued in September, 1874, for money secured on a registered bond of August, 1867, repayable on the 10th of April, 1868. The plaintiff pleaded payment of interest by defendant in November, 1868, and April, 1870. The Lower Court rejected the suit as barred by Act XIV of 1859, holding that payment made before Act IX of 1871 could not be treated as payment under section 21 of the Act, which had no retrospective effect. The High Court,

Postponement of the provisions of secs. 2 and 3, Parts II and III, of Act IX of 1871, to 1st April, 1873, led to conflicting decisions.

Decisions of Madras High Court implied that IX of 1871 was not applicable to suits brought after 1st April, 1873, if founded on causes of action accrued before that date.

Subsequent Madras decisions in suits brought after Act XIV had been altogether swept away.

(1) 7 M. H. C. R., 392.

(2) I. L. R., 1 Bom., 304.

(3) I. L. R., 1 Mad., 264.

referring to Chinnasami Iyengar,⁽¹⁾ held in March, 1877, that the payments were sufficient, as the Act did not expressly require that such should have been made after it began to operate, and that it was a mode of extending the period under that Act. In *Madhavan v. Achuda*,⁽²⁾ plaintiff sued in November, 1875, on a Pro-note of November, 1871, payable on demand. The District Judge rejected the suit as barred. The suit was instituted after 1st April, 1873, when Act IX of 1871 had come into full operation, and the old law had been altogether swept away, and the only guide as to the survival of the remedy by action was section 4 of Act IX of 1871, and its appendix, schedule 2, which allowed to a Pro-note on demand three years' time counted from the date of demand.

Act XV of 1877 repealing Act IX of 1871 was introduced on the 1st day of October, 1877.

15. Act IX of 1871 was superseded by Act XV of 1877, which came into force from the first day of October, 1877. A few alterations were made by Act XII of 1879, and VIII of 1880, which received the assent of the Governor-General on the 29th July, 1879, and 12th March, 1880, respectively. The former substituted a new Article for 161, added a few words to Articles 166 and 171, inserted newly Articles 171-a, 171-b and 171-c, and substituted a few words in Article 179. The latter Act, VIII of 1880, simply corrected a clerical error in column 3 of Article 171-a.

XII of 1879 and VIII of 1880 made a few alterations.

Three Statutes of Limitations in 26 years.

16. So there have been three Statutes of Limitations in 26 years, each containing provisions differing considerably from those of its predecessor. The general terms used in Act XIV of 1859 led to much uncertainty and litigation, and in order to avoid such uncertainty, Act IX of 1871 was enacted, providing for defined periods from which time should run, and the Act of 1877 is only a reproduction of its predecessor, but with certain alterations and improvements suggested by the decisions of courts. Act IX of 1871 contained no provision similar to that of the 2nd clause of section 2 of Act XV of 1877 which distinctly provides against any title acquired or any right to sue barred under Act IX of 1871, or its predecessor being affected or revived.

Act XIV of 1859 led to much uncertainty and litigation to avoid which Act IX of 1871 was passed.

(1) 7 M. H. C. R., 392. | (2) I. L. R., 1 Mad., 302.

17. Even before Act XV of 1877 began to operate, the courts, looking to the great confusion that would arise from holding that rights which were supposed to be barred were again revived by the new provisions of the new Statute, held that a claim once barred could not be revived by a change in the Law of Limitations.

Claim once barred cannot be revived.

18. Up to the introduction of Act IX of 1871, Statute of Limitations was supposed to bar the remedy, but not to extinguish the right. By section 29 of Act IX of 1871, it was provided for the first time that at the expiration of the statutory period for a suit for possession of land or hereditary office, the right thereto shall be extinguished. Section 28 of Act XV of 1877 extinguished such right to any property. *Gunga Gobind Mundul v. The Collector of the 24-Pergunnahs*,⁽¹⁾ first established the principle that where a suit for possession of land is barred by a Statute of Limitation, the right is extinct.

Act IX of 1871 for the first time provided that expiry of period extinguished right to any property.

19. After several conflicting decisions on the question whether the Limitation Acts extinguished the debt, the Calcutta High Court in *Mohesh Lal v. Busunt Kumaree*,⁽²⁾ finally held, concurring in the decisions of the Madras High Court in *Valia Tamburatti v. Vira Rayan*,⁽³⁾ and *Madhavan v. Achuda*,⁽⁴⁾ that the Limitation Act did not extinguish the debt. In *Nursing Doyal v. Hurryhur Shaha*,⁽⁵⁾ Pontifex, J., observes: "We are of opinion that neither the Limitation Act of 1871, nor that of 1877, extinguishes a debt. These Acts only bar or discharge the remedy. This we think is clear from the language of the Acts, and particularly from sections 12 and 29 of the Act of 1871, and sections 11 and 28 of the Act of 1877."

Limitation Acts bar the remedy but do not extinguish the debt.

20. "The difference between these Acts and the English Limitation Law is, that in India, Limitation need not be set up as a defence (section 4 of the Act of 1871 and section 4 of the Act of 1877) while in England the defendant must expressly claim the operation of the Statute. Section 60 of the Contract Act, which was passed after

Difference between the Indian and English Limitation Acts.

(1) 11 Moore, I. A., 345.

(2) I. L. R., 6 Calc., 340.

(3) I. L. R., 1 Mad., 228.

(4) I. L. R., 1 Mad., 301.

(5) I. L. R., 5 Calc., 897.

the Limitation Act of 1871, also shows that the debt is not extinguished, but may be insisted on for certain purposes ; so likewise, if the creditor had a lien on the goods of his debtor on a general account, he would be entitled to hold the goods for a debt, the recovery of which was barred by the Limitation Act. And probably it would be held that an executor would be allowed to retain out of a legacy a debt owing by the legatee to the testator, though its recovery was barred by the Act."

The Statute is an Act of Limitation and prescription.

"21. The Statutes of Limitations in this country have been not only Statutes regulating the practice of the forum and Statutes affecting the right, but have also become Statutes of prescription. Such was the Law of Limitation up to 1st of July, 1882, when Act V of 1882, the Indian Easements' Act which received the assent of the Governor-General on the 17th of February, 1882, began to operate.

Act V of 1882 repealed definition of Easement and sections 26 and 27 of the Limitation Act in the Territories of Madras, the Central Provinces and Coorg.

22. Its operation being restricted to the Territories respectively administered by the Governor of Madras in Council, and the Chief Commissioners of the Central Provinces and Coorg, and by section 3, it repealing sections 26 and 27, and the definition of easement contained in the Limitation Act, and enjoining that all references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act IX of 1871, shall, in the Territories to which the Act extends, be read as made to sections 15 and 16 of the Indian Easements' Act, the Statute of Limitations in the said Territories has become purely an Act of Limitation. The rules of prescription applicable to easements which formed a part of the Law of Limitation have now to be found for such Territories in the Indian Easements' Act.

Reasons why the Legislature passed the Statute of Limitations.

23. The Statutes of Limitations are Laws of Peace and Justice : when property has been so long in the possession of a family that it has passed to the children and grandchildren of those who first acquired it, and they, unconscious of any defect of title, have formed their habits and plans of life according to the income that the property produces, it would be cruel to deprive them of it. The

members of the family from which it came (never having enjoyed it) suffer but little from its loss. After a great lapse of time, it is impossible to get at truth, so as to do justice upon any case. You have some documents, but you may not have all that relate to the title, and those which are lost might have explained or perhaps done away entirely the effect of those which remain. Although some documents may be preserved, the witnesses necessary to make the account of the transaction complete and for a decision, cannot. *White v. Paruther* (1. Knap. p. 227) cited in Norton's Topics of Jurisprudence, page 36.

24. The Statute of Limitations protects persons who, having paid their debts, would be liable to be called on to pay them a second time, in consequence of the loss of vouchers. In *Adnam v. Earl of Sandwich* (2. Q. B. Div. 489) Field, J., observes: "The legitimate object of all Statutes of Limitation is no doubt to quiet long continued possession, but they all rest upon the broad and intelligible principle that persons who have at some anterior time been rightfully entitled to land or other property or money, have, by default and neglect on their part to assert their rights, slept upon them for so long a time as to render it inequitable that they should be entitled to disturb a lengthened enjoyment or immunity to which they have in some sense been tacit parties."

Observations of Field, J., in a case decided in May, 1877.

25. Mr. Justice Story has remarked on the Statute of Limitations that "it was intended to be a Statute of repose. It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demand after the true state of the transaction may have been forgotten, or be incapable of explanation by reason of the death or removal of the witnesses." Statutes of Limitations are in their nature strict and inflexible enactments. The object of the Legislature in passing them is to quiet long possession and to extinguish stale demands. Such legislation has been advisedly adopted in India as it has been in this country.

Mr. Justice Story's remarks.

Observations of the Privy Council.

Parties to a contract cannot, by agreement, avoid the effect of the Law of Limitation.

26. The Indian Law of Limitation imposes upon the courts an obligation to dismiss all suits, appeals and applications made after the period of limitation as prescribed in the schedules, although limitation has not been set up as a defence. Peacock, C. J., in *Krishna Kamal Singh v. Hiru Sirdar*,⁽¹⁾ observes: "A man may bind himself not to execute a decree of court, or he may bind himself not to execute a decree of court within a certain period, but he cannot, by binding himself not to execute the decree for a certain period, add to the time which the law allows him to execute it. If a man having a cause of action against another to recover immoveable property, or to recover money, or to recover damages for a trespass upon his land, or for an assault, should say to that person 'I will not sue you for 20 years,' he would not acquire a right to sue after the period of limitation fixed by law. If he binds himself not to sue within a stated period, and does not intend to give up his right to sue at all, he must take care not to bind himself beyond the time within which the Law of Limitation allows him to sue. So, in the case of a decree, if a man binds himself not to execute a decree within a certain period, he must take care, if he wish to execute the decree at all, not to bind himself not to execute the decree for a longer period than that within which the law would allow him to execute it." In *East India Company v. Oditchurn Paul*,⁽²⁾ the Lords of the Privy Council have observed, "there might be an agreement that in consideration of an inquiry into the merits of a disputed claim, advantage should not be taken of the Statute in respect of the time taken in the inquiry, and an action might be brought for breach of such agreement; but if to an action for the original cause of action the Statute of Limitation is pleaded, proof being given that the action did clearly accrue more than six years before the commencement of the suit, the defendant, notwithstanding any agreement to inquire, is entitled to judgment."

27 In *Delhi and London Bank Limited v. Orchard*,⁽³⁾

Interpretation of Statutes. When "must" and "shall"

(1) 4 Ben., L. R., 105, F. B. | (2) 5 Moore, L. A., 44.
(3) 1 L. R., 3 Calc., 47.

the Privy Council observe that in interpreting Statutes, the words "must" and "shall" may, in some cases, be substituted for the word "may," but only for the purpose of giving effect to the intention of the Legislature. In the absence of proof of such intention, the word "may" should be taken as used in its natural, i.e., in a permissive, and not in an obligatory sense. The Privy Council in *Luchmee Buksh Roy v. Runjeet Ram Panday*,⁽¹⁾ observe: "Statutes of Limitation, like all others, ought to receive such a construction as the language in its plain meaning 'imports,' and 'in construing these Statutes the ordinary rules of interpretation must prevail.'"

may be substituted for the word "may."

Ordinary rules of interpretation must prevail.

28. The Limitation Act is a disabling Act, and no court is justified in straining its language beyond its natural meaning in order to take away from any one the rights which, but for it, he would possess. There is little in the general framing of the Act to throw light upon particular provisions." *Roberts v. Harrison*.⁽²⁾

Language of the Act should not be strained.

29. Innes, J., in *Kunchi v. Seshagiri*,⁽³⁾ observes: "The right to execute a decree has been much curtailed by the provisions of section 230 of the Civil Procedure Code, and the provisions of the Limitation Act should be construed as far as possible so as to prevent the defeat of *bond fide* endeavours to secure the fruits of a decree once obtained. In cases of doubt an Act of Limitation ought to be construed in the manner most favorable to the person whose right is the subject of the limitation. *Lallubhai v. Naran*.⁽⁴⁾ In *Adnam v. Earl of Sandwich*,⁽⁵⁾ Field, J., observes, as the effect of the Statute 3 and 4, Wm. IV, C. 27, which is now relied upon by the plaintiff, is to divest the estate of the rightful owner and convey it to the wrong-doer without compensation to the former, to hold that such a transfer takes place in cases where the rightful owner has been guilty of no neglect or default, would work such an injustice to him as to induce us to resort to any reasonable construction of the Statute which

Should be so construed as to prevent defeat of *bond fide* endeavours of creditors to execute decrees.

Should be construed most favorably in case of doubt.

(1) 13, Ben. L. R., 182.

(2) I. L. R., 7 Cal., 333.

(3) I. L. R., 5 Mad., 141.

(4) I. L. R., 6 Bom., 724.

(5) 2 Q. B. Div., 490.

should avoid so unjust a result. And we think that the language of the Statute is fairly open to such a construction."

Observations of
Jervis, C. J.

30. In *Abley v. Dale* (11 C. B. 378, see p. 391) Jervis, C. J., in delivering judgment in a case turning on the construction of a Statute, said: "If the precise words are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it does lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning." *Abba Haji Ishmail v. Abba Thara*.⁽¹⁾

What Statutes
do not embrace
the Sovereign.

31. Statutes limiting rights and interests are not to be construed to embrace the Sovereign or the Government, unless the same be expressly named or intended by necessary implication. (Kent, Lecture 20, p. 507.) In England, the Crown is not bound by Statutes of Limitation, unless named. (Willberforce, p. 38.) In *Ganpat Putaya v. the Collector of Kanara*,⁽²⁾ the question was whether Crown judgment-debt was entitled to precedence. West, J., observes: "It is a universal rule that prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in a Statute. This rule of interpretation is well established, and applies not only to the Statutes passed by the British, but also to the Acts of the Indian Legislature framed with constant reference to the rules recognized in England. And the rule, as applied to the present case, is not an unreasonable one." In the case of *The Secretary of State in Council of India v. The Bombay Landing and Shipping Company*,⁽³⁾ a Crown debt was held to be entitled to the same precedence in execution as a like judgment in England in the absence of a statutory enactment to the contrary.

(1) I. L. R., 1 Bom., 253.

(2) I. L. R., 1 Bom., 7.

(3) 5, Bom. H. C. Rep., 23 Q. C. J.

32. In *Shaikh Omed Ali v. Nidhee Ram*,⁽¹⁾ Couch, C. J., in July, 1874, observed, with reference to the illustration of section 102 of Act I of 1872, "the Illustrations are only intended to assist in construing the language of the Act." In *Peerun v. Field*,⁽²⁾ with reference to the illustration (a) under section 27 of the Criminal Procedure Code of 1872, which relates to jurisdiction, Phear, J., observes: "Now, under the words of this section alone, it would be impossible to hold that an offence which was committed locally in the neighbourhood of Allahabad, and unquestionably far outside of the District of Howrah, could be entertained by the Magistrate of the District of Howrah. But there is a certain enlargement of the words of this section applicable to the case which is now before us, effected by the Illustration (a), which is appended to the section. This illustration is the first of several illustrations appended to the section, and may be reasonably taken as a rider to the first paragraph of the section itself. This illustration is plainly larger than the first paragraph or any other enacting portion of the section itself, and we ought not therefore to carry it further than its own words go. It is directed to meet a particular difficulty, which is very analogous to, but not, strictly speaking, comprehended within those covered by the general description of the section." In *Kylas v. Puddo*,⁽³⁾ Garth, C. J., observes, that although the illustrations may serve to exemplify the meaning of the law, they ought never to be allowed to control the plain meaning of the section itself, and certainly they ought not to do so when the effect would be to curtail a right which the section in its ordinary sense would confer.

Whether Illustrations exemplify the meaning of the law or control the plain meaning of the section itself.

It has been observed that Illustration (a) to section 27 of the C. P. C. is plainly larger than any enacting portion of the section itself and ought not to be carried further than its own words go.

Observations of Garth, C. J.

33. In *Dubey Sahai v. Ganeshi, Lal*,⁽⁴⁾ Stuart, C. J., observes: "But I confess I have not derived much assistance from Act IX of 1871. The sections of that Act which bear on the subject are sections 4 and 5, and appended to section 4 are two illustrations, the latter of which (b) is in the following terms:—'An appeal presented after the

Observations of Stuart, C. J.

(1) 22 W. R., 367.

(2) 21 W. R., Cr. R., 67.

(3) 8 C. L. R., 277, 283.

(4) 1 L. R., 1 All., 34 & 36.

Illustrations do not in legal strictness form a part of the Acts and are not absolutely binding on the courts.

Pleaders and subordinate courts regard illustrations more than the language of the Act itself.

For the High Court of this country illustrations are not only not required but they are frequently the cause of embarrassment.

prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.' This appears to meet the present case, showing clearly, as it does, that, in the opinion of the person who prepared it, such a preliminary objection as the present might be entertained. But it is a mere illustration, and not binding as law, and I can find no direct authority for it in either of the sections referred to. In *Nanak Ram v. Mehin Lal*,⁽¹⁾ Stuart, C. J., observes: "These illustrations, although attached to, do not in legal strictness form part of the Acts, and are not absolutely binding on the courts. They merely go to show the intention of the framers of the acts, and in that and in other respects they may be useful, provided they are correct. In this country, where the administration of the law is for the most part conducted by persons who are not only not professional Lawyers, but who have had no legal education or training in any proper or rational sense of the term, the Legislature acts with wisdom and salutary consideration for the interests of justice by putting into the hands of judicial officers appliances, such as the illustrations in question, for their guidance and direction in the performance of their duties. But, for myself, I can truly say I have never experienced their utility, and I fear they sometimes mislead, and I observe they are more regarded in the Subordinate Courts in these provinces, and even by the Pleaders of this High Court, than is the paramount language of the Act itself, of which, however, as I have remarked, they strictly speaking, form no part."

34. "To be of real service to those for whose assistance these illustrations are intended, they ought to be pellucidly clear in their phraseology, and, if possible, I had almost said infallibly, sound in their law. But for the purposes of the High Courts of this country these illustrations are not only not required in any sense, but they are frequently the cause of embarrassment, and I would infinitely prefer to have the bare and simple language of the Act itself, without any appendages of the kind. I am afraid, too, that they are open to the objection of being

(1) I. L. B., 1 All., 487 & 495.

opposed to the canons of construction which prevail in the English Courts for the interpretation of Statutes. Thus it has been ruled in England, that 'the intention of the Legislature must be ascertained from the words of a Statute, and not from any general inferences to be drawn from the nature of the objects dealt with by the Statute.' *Fordyce v. Bridges*, (1, H. L. Cas. 1; S. C. 11 Jur. 157); and 'the court knows nothing of the intention of an Act, except from the words in which it is expressed applied to the facts existing at the time.' *Logan v. Courtown* (Earl) (13 Beav. 22; S. C. 20, L. J. Chanc. 347); the language of a Statute taken in its plain ordinary sense, and not its policy or supposed intention, is the safer guide in construing the enactments'—*Philpott v. St. Georges' Hospital* (6 H. L. Cas. 338; S. C. 3, Jur. N. S. 1269.) In *Reg. v. Rahimat*⁽¹⁾ West, J., observes: "The illustrations to the Penal Code rank as cases decided upon its provisions by the highest authority. But as every authority may sometimes err, we are justified in asking whether this may have happened in the present instances." The Indian Legislature appear to consider illustrations as parts of the enactments themselves, and this is to be presumed from the fact of the schedule of Act II of 1882 repealing the first illustration of section 12 of Act I of 1877.

35. *Reg. v. Dorabji*,⁽²⁾ the court held that an Act of Limitation being a Law of Procedure governs all proceedings to which its terms are applicable from the moment of its enactment, except so far as its operation is expressly excluded or postponed. In *Khusalbai v. Kabhai*,⁽³⁾ Melville, J., observes: "The above general rule must admit of the qualification that, when the retrospective application of a Statute of Limitation would destroy vested rights or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the Statute is not, any more than any other law, to be construed retrospectively."

36. In a suit brought on the 12th March, 1880, on a

(1) I. L. R. 1 Bom., 147. | (2) 11 Bom., O. Rep., 117.

(3) I. L. R., 6 Bom., 28.

Language of a Statute taken in its plain ordinary sense and not its policy or supposed intention is the safer guide.

Observations of West, J., on Illustration to the Penal Code.

Indian Legislature would appear to consider illustration as part of the enactment.

Should not be construed retrospectively.

Observations of Melville, J.

A. H. held waiver before IX of 1871 not to avail retrospectively.

registered bond dated 24th May, 1866, which provided that in default of payment of any instalment, the whole amount should be due, the first default was made on the 28th June, 1866. No payment was made after Act IX of 1871 came into force. It was held that limitation began to run from first default, and that no waiver before Act IX of 1871 came into force could affect the suit on such a bond: *Ahmed Ali v. Hafiza Bibi*.⁽¹⁾

Limitation Acts do not define "immoveable property," "moveable property," and "interest in immoveable property."

37. The Limitation Acts do not explain or define the words "immoveable property," "moveable property," and "interest in immoveable property"; sections 5 and 6 of the General Clauses Act I of 1868, state what immoveable property shall include and moveable property shall mean. The term "any interest in immoveable property" occurs in Article 144, and what it is has to be determined with reference to the subject in dispute in each case. This is very important, because if the subject-matter of a suit is immoveable property or any interest in immoveable property it will have twelve years under Article 144. But if it be moveable property it will have only six years under Article 120, in the absence, in either case, of any special provision in the Act. With reference to the decision of the Privy Council holding that *Todagaras Hak* was immoveable property, and the decisions of the Bombay High Court holding that right to the hereditary office of Joshi, and claim to an annual cash allowance granted to a Hindu Temple, were immoveable property, the Legislature, by its subsequent more fully developed legislation (Act IX of 1871) assigned the twelve years' limit to suits for hereditary office (Article 124) for periodically recurring right (Article 131), and Haks, and Malikanas. (Article 132). The decisions which induced the Legislature to class such cases with suits for real property will not be out of place here, and will help the disposal of the question whether or not the subject-matter of any suit is real property.

Todagaras Hak and right to hereditary office were held as immoveable

38. The Privy Council in the *Todagaras* case,⁽²⁾ would appear to have approved of the decisions of the Bombay

(1) I. L. R., 3 All., 514.

(2) L. R., I. A., 34.

High Court in *Krishnabhat v. Kapabaht*,⁽¹⁾ and *Balvantrao v. Purshotam*,⁽²⁾ in which right to the hereditary office of Joshi was held immoveable property. Their Lordships observed that the rule laid down by Westropp, C. J., for the interpretation of Act XIV of 1859, section 1, clause 12, is shortly this, *viz.*, that inasmuch as the term "immoveable property," is not defined by the Act, it must, when the question concerns the rights of Hindus, be taken to include whatever the Hindu Law classes as immoveable, although not such in the ordinary acceptation of the word. To the application of this rule within proper limits, their Lordships see no objection. The question must in every case be whether the subject of the suit is in the nature of immoveable property, or of an interest in immoveable property, and if its nature and quality can only be determined by Hindu Law and usage, the Hindu Law may properly be invoked for that purpose. Thus, in the two cases on which the appellant relies, Hindu texts were legitimately used to show that in the contemplation of Hindu Law, hereditary offices in a Hindu community, incapable of being held by any person, not a Hindu, were of the nature of immoveables."

property within the meaning of Act XIV of 1859.

Hindu Law may properly be invoked to decide whether the subject-matter of a suit is real property.

39. The Privy Council, while holding independently of Hindu law, that the right to a Todagaras Hak was an interest in "immoveable property" within the meaning of Act XIV of 1859, ruled that the determination of the question depended upon general construction to be given to the term "immoveable property" and "interest in immoveable property" as used by the Indian Legislature, and that the term "immoveable property" comprehends certainly all that would be real property according to English Law and possibly more. They further observe that in some foreign systems of law in which the technical division of property is into moveables and immoveables, as *e.g.*, the Civil Code of France, many things which the Law of England would class as incorporeal hereditaments fall within the latter category."

P. C. held immoveable property comprehends all that would be real property according to English Law and possibly more.

40. In the *Collector of Thana v. Hari Sitaram*,⁽³⁾ the question was whether a claim to annual cash allowance granted by a Hindu Sovereign to a Hindu Temple was of the nature of immoveable property or of an interest

Cash allowance granted to a Hindu Temple was held an interest in immoveable property.

(1) 6 Bom. H. C. R., A. C. J., 137. | (2) 9 Bom. H. C. R., 99.

(3) I. L. R., 6 Bom., 546.

Observations of
Westropp, C. J.

therein. The facts were, that the Peshwa, by a Saamad of 1790, granted to a Hindu Temple an annual sum of Rs. 350 in cash, out of certain extra assessments, levied to meet local charges, and candies of rice out of some extra assessment in kind collected on lands. The Collector of Thana stopped the allowances in 1859, when the plaintiffs, in 1871, claimed to have the right established to the benefit of the above grant. Westropp, C. J., observes: "Looking to the fact that the Indian Legislature, which passed Act XIV of 1859, has not given any explanation or definition in that Act as to the scope of the phrase 'immoveable property,' but left suitors to their former ideas on that subject, it would be very hard upon them to draw the line very tightly for they had no guide furnished to them which could have led them to suppose that "immoveable property" according to the Act meant anything less than what they had previously known as such."

Land includes
trees.

41. In *Jee Jagrani Bibi v. Ganeshi*,⁽¹⁾ which was a suit for six mangoe trees, the Lower Appellate Court rejected the suit on the ground that the plaintiff could not, by twelve years' adverse possession, acquire a title to trees which, not being land, section 29 of Act IX of 1871 was not applicable. It was held that land comprehends what it covers and would include immoveable property as recognized and defined in section 2 of Act I of 1868.

Debt charged
on immoveable
property is "an
interest in im-
moveable prop-
erty."

42. In *Jineswar Dass v. Maha Beer Singh*,⁽²⁾ plaintiff sued to realize money due upon a mortgage deed by the sale of the mortgaged lands. It was held that the claim was in substance a suit for the recovery of immoveable property or an interest in immoveable property within the meaning of clause 12, section 1, Act XIV of 1859.

Review of the
provisions of
the Limitation
Acts bearing
on suits for re-
demption.

Provision of
Act XIV of 1859.

43. Up to the 1st day of January, 1862, no length of time barred suits for redemption of property, moveable or immoveable (clause 4, section 3, Regulation II of 1805 of Bengal; clause 4, section 18, Regulation II of 1802 of Madras.) Redemption suits instituted after that date were governed by clause 15, section 1 of Act XIV of 1859, which provided for redemption of moveable property within 30 years, and immoveable property within 60 years from the time of the mortgage. If, in the meantime, the mortgagee or some person claiming under him had ac-

(1) I. L. R., 3 All., 435. | (2) I. L. R., 1 Calc., 163.

knowned in writing signed by him, the mortgagor's title or his right to redeem, the mortgagor had 60 years from the date of such acknowledgment. With reference to this provision of the Act it was contended in *Luchmee Buksh Roy v. Runjeet Ram Panday*,⁽¹⁾ which was a Privy Council case, that a limitation which ran from the time of the mortgage could not apply to a usufructuary mortgage in which the possession was consistent with the original intention of the parties until the mortgage debt was paid off. Their Lordships observe: "Legislature has enacted this limitation in the most general terms, and in language sufficiently large to embrace every kind of mortgage. There can be no doubt it was deliberately done, and that the provision found in the 4th clause of the 3rd section of Regulation II of 1805, which excluded cases of mortgages or deposit from the Regulations relating to limitation, was designedly set aside, a different policy prevailing with those by whom the recent Act was passed. Their Lordships therefore think that this mortgage is clearly within Act XIV of 1859."

Legislature has enacted this limitation to embrace every kind of mortgage.

44. In *Vanneri Purushothaman Nambudri v. Pakanattil Knigh Menavan*,⁽²⁾ the plaintiff sued to recover land alleged to have been mortgaged in 1760, stipulating that the produce should extinguish interest. The Lower Appellate Court rejected the suit on the ground that cause of action had arisen more than twelve years before the passing of the Regulation II of 1802, and that the exception as to mortgages did not apply to this case. The High Court observe: "The possession of the mortgagee for 10,000 years upon such a transaction as the present would be perfectly consistent with the continuance of the relation of mortgagor and mortgagee, because the contract simply amounts to this: "I lend the money, and you the land. If either of us wants that which he has lent, he shall restore that which was lent to him." It is quite obvious that no opportunity and necessity for interposing, that is no cause of action accrued, until something was done to render the friendly possession hostile." This case was not decided under Act XIV of 1859, as the suit was filed in 1861.

Madras High Court held suit to redeem a mortgage twelve years before Reg. II of 1802 not barred.

45. In cases where the contract of mortgage was enjoyment of the property by the mortgagee for a term fixed, it was held that the mortgagor should not redeem the

Cases where mortgagor held not entitled to redeem before the term.

(1) 13 B. L. R., 177.

| (2) 2 M. H. O. R., 382.

land nor discharge the debt until the expiry of the term. Sri Rajah Setrucherla Ramabadura Raju Bahadur.⁽¹⁾ In Malabar Otti and Kanom mortgages which entitle the holder thereof to possession for twelve years from the date of the mortgage, cannot be redeemed until it has expired, and to such stipulation it was held that effect should be given. *Keshava v. Keshava*⁽²⁾

How the provision of Act XIV of 1859 was modified by Act IX of 1871.

46. Act IX of 1871, like its predecessor, made the date of mortgage the starting point, but by Article 148, modified only the provision as to the time within which acknowledgment of mortgagor's title should have been made to entitle him to a new period. The modification was that the acknowledgment in writing of the mortgagor's title or right of redemption, which gave a new period of limitation, should be made within the period of limitation originally prescribed, and reckoned from the date of the mortgage, and this alteration was made rather to remove ambiguity in the construction of the words "in the meantime" used in clause 15, section 1 of the former enactment, than to give full effect to section 29 of Act IX of 1871, which, for the first time, provided for the extinguishment of right to land at the expiration of the prescribed period; under both enactments an acknowledgment by the mortgagee or some person claiming under him of the title of the mortgagor made in writing to a third party was held a sufficient acknowledgment to give a fresh period of limitation.

Change made by Act XV of 1877.

47. Act IX of 1871 was repealed by Act XV of 1877, which came into force on the 1st day of October, 1877, Article 145 required redemption of moveables within 30 years from the date of pledge. Article 145 provides for redemption of immoveable property within 60 years from the time that the right to redeem accrues. Under Article 147, a mortgagee's suit for foreclosure or sale should be instituted within 60 years from the time that the mortgage debt becomes due. Article 135 allows twelve years to a mortgagee's suit in the Mofussil for possession of immoveable property mortgaged from the time that the right of mortgagee's possession determined, while Article 146 gives to the like suits instituted in courts established by a Royal Charter, 30 years from the date of the last payment of any part of the principal or interest. An acknow-

(1) I. L. R., 2 Mad., 314. | (2) I. L. R., 2 Mad., 44.

ledgment satisfying the conditions of section 19 of the Act gives to the above suits a new period of limitation from the date of the acknowledgment which is to be in writing "signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability." The terms of this enactment regarding mortgages are considered more equitable. The following Table will exhibit in one view the different provisions in the three enactments regarding the nature of acknowledgment of a mortgagor's title or right to redeem.

Before Act XIV of 1859.	Act XIV of 1859, Section 1, Clause 15.	Act IX of 1871 came into force on the 1st July, 1871. Article 148.	Act XV of 1877 came into force on the 1st October, 1877. Article 148 and Section 19.
Before this Act, which began to operate from 1st June, 1862, there was no limitation for redemption of mortgage.	"If in the meantime an acknowledgment of the title of the depositor, pawnor, or mortgagor, or of his right of redemption, shall have been given in writing, signed by the depositor, pawnnee, or mortgagee, or some person claiming under him, from the date of such acknowledgment in writing."	"Sixty years" from "the date of the mortgage, unless where an acknowledgment of the title of the mortgagor, or of his right of redemption has, before the expiration of the prescribed period, been made in writing, signed by the mortgagee or some person claiming under him, and, in such case, the date of the acknowledgment."	<p>Article 148, "60 years" from "when the right to redeem or to recover possession accrues."</p> <p>Sec. 19: "If before the expiration of the period prescribed for a suit or application in respect of any property or right an acknowledgment of liability in respect of such property or right has been made in writing signed by the parties against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed." Oral evidence is receivable to prove the date, but not the contents of the acknowledgment.</p> <p>"Explanation 1.—For the purposes of this section, an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit, to enjoy, or is coupled with a claim to a set off, or is addressed to a person other than the person entitled to the property or right."</p> <p>"Explanation 2.—In this section "signed" means signed either personally or by an agent duly authorized in this behalf."</p>

No provision for suit for foreclosure or sale in the Acts of 1859 and 1871.

48. Neither Act XIV of 1859, nor IX of 1871, provided for suits by a mortgagee for foreclosure or sale, for which Article 147 of the last enactment XV of 1877 contains distinct provision.

49. Section 4 of the Act XIV of 1859, which corresponds to section 19, does not require admissions to be made within the prescribed period, and therefore the question in redemption suits was whether the acknowledgment of the mortgagor's title must have been made before the expiration of the period of limitation.

The words "in the meantime" in clause 15, section 1 of Act XIV of 1859, were held by M. H. to mean the period of limitation and not the time between mortgage and suit.

50. In *Vasudevan Nambudri v. Mussa Kutty*,⁽¹⁾ Madras High Court held that the words "in the meantime" used in clause 15, section 1 of Act XIV of 1859, implied that an acknowledgment of a mortgagor's title or right to redeem must be given before and not after the expiry of the period of limitation, and that the words could not import the time between the creation of a mortgage, and the bringing of the action; but the Allahabad High Court which had adopted the same view in *May, 1871*, in *Mahomed Abdool Ruzzah v. Syud Asif Ali Sha*,⁽²⁾ subsequently held in *Daia Chand v. Sarfraz Ali*,⁽³⁾ that an acknowledgment made in 1841, in a certain settlement record, was sufficient to satisfy the requirement of the clause in Article 148, schedule 2, Act IX of 1871, modifying the provisions of clause 15, section 1, Act XIV of 1859, and that inasmuch as before the latter enactment there was no limitation to suits for redemption of mortgage of landed property, it was not necessary to enquire and ascertain when the mortgage acknowledged in 1841 was actually made. Even after this decision, the Madras High Court followed their own in *Mukkani v. Manan*,⁽⁴⁾ which was a suit to redeem a mortgage of 1761, on the strength of an acknowledgment made in 1839. The High Court observe, that as section 18 of Act XIV of 1859 allowed two years' time for parties who relied on the old rule of limitation to institute their suits, any suit brought between 1862 and 1871, after 60 years from the

(1) 6 M. H. C. R., 138.

(2) 3 N.-W. P. H. C. R., 119.

(3) 1 I. L. R., All., 425.

(4) I. L. R., 5 Mad., 182.

date of the mortgage or on the strength of an acknowledgment not made within 60 years from the date of the mortgage would have been unquestionably barred, and that neither Act IX of 1871, nor Act XV of 1877, was designed to revive any right which had become previously barred. It has been further observed that the term "the period prescribed" used in those Acts refers to the period prescribed by the Act which governs the suit, and not the period prescribed by the law which existed at the date of the acknowledgment.

51. As to whether Article 132 applies to enforcement of personal remedies on mortgage bonds, simple or usufructuary, against the persons of mortgagors, the decisions of the High Courts are conflicting. Equally so are the decisions on the question whether Article 132 applies to suits to enforce lien on real property secured by an instrument of hypothecation or whether it is intended that such suits should have the extended period of 60 years provided for by Article 147 of Act XV of 1877. (See *Notes* under Articles 132 and 147.)

Application of Articles 132 and 147.

52. I shall now proceed to refer shortly to the sections and Articles which have appeared to the High Courts to work hardship and to require, consequently, modification.

Sections and Articles considered by the High Courts to require modification.

53. The 2nd clause of section 5 allows to the courts a discretionary power to admit any appeal, or any application for review, after time. The Calcutta High Court, holding that the terms of the section do not admit of the same indulgence being shown to an applicant for leave to appeal as a pauper, observe that it is strange that the indulgence should not be shown to him while he may apply for a review of judgment with the same indulgence as to delay in making the application as a person who is not a pauper. (See *Note T*, under section 5, p. 35.)

Section 5, clause 2. Provision for admitting appeals and applications for review after time.

54. Section 13 does not provide for the case of joint-contractors of whom one may be absent from British India after the accrual of the cause of action. In such a case, a creditor has to choose between remedy against an insolvent debtor, and having his debt barred. A judgment obtained against one of several joint-contractors bars 2nd

Section 13. Exclusion of time of defendant's absence from British India.

suit against any of the others. Garth, C. J., observes, that the rule leads to hardship when one of several joint-contractors is absent beyond seas, and that it has been remedied in England by Statute. He says : "This is an injustice which the Legislature, if they so pleased, could easily remedy." (See *Note L*, under section 13, p. 93, 94.)

Section 15. Exclusion of time during which commencement of suit is stayed by injunction or order.

55. Section 15 does not apply to decrees, the enforcement of which may have been stayed by injunction. The word "suit" does not include an application, and when execution of a decree is stayed by an injunction pending the disposal of a suit, difficulty is felt if the suit happen to be disposed of after the expiry of the time for enforcement of the decree. The Calcutta High Court observe : "It might thus happen that if the injunction remained in force for three years, execution could be absolutely barred. This appears to be the present state of the law." (See *Note A and E*, under section 15, pp. 114-116.)

Section 21. Effect of acknowledgment by one of several joint-contractors.

56. Under section 21, acknowledgment by one of several mortgagees does not give a new period of limitation as regards a share of the mortgaged property; such acknowledgment under the Indian Act is wholly ineffectual while the English Statute provides for breaking up a mortgage into portions to give effect to the acknowledgment of one of several mortgagees. (See *Note I*, under section 21, pp. 190, 191.)

Section 22. Effect of substituting or adding new plaintiff or defendant.

57. Section 22 relates to the effect of substituting or adding new plaintiff or defendant. It does not give to the courts the discretion which the Common Law Procedure Act of 1852 gives to the Courts in England. Under the said Procedure Act, if the court had reason to believe that all the plaintiffs had not been joined for some improper motives, the amendment would be refused, but if it considered that the non-joinder was a *bona fide* mistake it would allow the amendment for the express purpose of protecting the plaintiffs' interests and preventing the Limitation Act from working injustice. But the policy of the Legislature in this country has been to make

the Law of Limitation much more strict than in England, and to take away as far as possible any discretion from the courts to modify its strictness. (See *Note O*, under section 22, pp. 197-198.)

58. Article 11 refers to sections 280, 281, 282 and 335, but not to 332, which refers to claims of persons dispossessed of property in execution of a decree disputing the right of the decree-holder to be put in possession. Unsuccessful claimants under the sections expressly named are subject to the special limitation of one year, while those under section 332 avail themselves of the ordinary period of limitation. The Madras High Court observe: "It is possible and was probable that mention of section 332 of the Code of Civil Procedure was omitted by oversight from this clause." (See *Note G*, under Article 13, p. 327.)

Article 11. Suit by unsuccessful claimants under sections 280, 281, 282, or 335.

59. Article 161 relates to the issue of notice under section 258 of C. P. C., to show cause why the payment or adjustment made out of court should not be recorded as certified. This Article allows only 20 days from the date of payment. The Calcutta High Court observe that the shortness of time renders the provisions of section 258 nugatory as the debtors who are ignorant of law receive the first intimation of fraud of their creditors only when they proceed to execute their decrees. (See *Note A*, under Article 161, p. 611.)

Article 161. Application by debtor to have payment out of court certified.

60. Article 179 provides for enforcement of decree or order which directs payments to be made at a certain date. Decrees for money are frequently passed on the consent of both parties allowing payment of the decree amount by monthly or yearly instalments, and entitling the creditor, in default of any one instalment, to realize the whole debt due under the decree. It is doubtful whether such decrees were contemplated by Article 179, and the decisions of the High Courts on this point are conflicting. The Bombay High Court observe that in the clause of Article 179 relating to enforcement of decrees payable by instalments, there is no provision similar to that in Article 75, which relates to promissory notes or bonds payable by instalments providing that if default be made in payment of one instalment, the whole shall be due. (See *Note M*, under Article 75, p. 412.)

Article 179. Provisions relating to execution of decrees.

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ACT No. XV OF 1877.

As amended by Acts No. XII of 1879 and No. VIII of 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Act No. XV of 1877 received the assent of the Governor General on the 19th of July, 1877: Act No. XII of 1879 received the assent of the Governor-General on the 29th of July, 1879, and Act No. VIII of 1880 received the assent of the Governor-General on the 12th of March, 1880.)

An Act for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to amend the law Preamble.
relating to the limitation of suits, appeals and
certain applications* to courts; and whereas it
is also expedient to provide rules for acquiring
by possession the ownership of easements and
other property; It is hereby enacted as fol-
lows:—

(a) The above preamble distinctly shows that the
Act is not intended to apply to all, but to certain appli-
cations to courts. The third division of Schedule II

The Act is not
intended to ap-
ply to all appli-
cations.

* By bill No. 23 of 1886, introduced into the Imperial Council on the 1st September 1886, it has been proposed to repeal Articles 171, 171a, 171b of the second schedule and to modify Article 171c by substituting "or section 582 of the Code of Civil Procedure" for "of the same code." The bill also proposes to extend the provisions of section 5 applicable to an appeal, to the objection and notice by respondent under section 561 of the C. P. C. and also to extend the provisions of the Limitation Act applicable to an application and order under section 103 of the C. P. C., to an application for an order, and to an order, for setting aside a dismissal under section 381 of the C. P. C. The repeal of the words "within 30 days from the date of the order" in sections 599 and 601, has also been proposed.

Does not apply to an application for probate.

which deals with applications, shows that every Article therein contained, No. 178 only excepted, specifically relates to some case pending or already decided. Article 178 must be construed, with reference to the wording of the other articles, and can relate only to applications *ejusdem generis*, and therefore not to an application for probate. In the previous Limitation Acts XIV of 1859, and IX of 1871, there was no such Article as 178. It is observed, that, had the Legislature intended to apply for the first time a period of limitation to such applications, there would have been some provision in regard to them similar to that contained in section 2, in respect of suits for which the new Act prescribes a shorter period of limitation than was previously allowed. In the matter of the petition of Ishan Chunder Roy.⁽¹⁾

Does not apply to one under Religious Endowments Act and appointment of new trustees.

(b) In *Janaki v. Kesavalu*,⁽²⁾ Turner, C. J., observes, that the Limitation Act could not have been intended to apply to an application for probate, an application under the Religious Endowments Act, an application for appointment of new trustees, &c., and that, if it was held that Article 178 would apply to all applications for which no period of limitation is provided, it would lead to most inconvenient results. This was in accordance with the decision of the Bombay High Court in *Bai Manekbai v. Manekji Kavasji*,⁽³⁾ in which Westropp, C. J., observes, that an examination of the schedule relating to "Applications" shows, that the applications therein contemplated are such as are made under the Civil Procedure Code.

Application to revive a case and restore it to the board.

(c) In *Bhojrub Dass Johurry v. Doman Thakoor*,⁽⁴⁾ it was held, in May, 1879, that the application of the legal representative of a deceased plaintiff for the revival of the suit was governed by Article 178, and had three years. In March, 1880, the same question had to be dealt with in *Govind Chunder Goswami v. Rungun Money* ⁽⁵⁾ in which, decree dated 6th December, 1869, established

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| (1) I. L. R., 6 Calc., 707. | (3) I. L. R., 7 Bom., 213. |
| (2) I. L. R., 8 Mad., 207. | (4) I. L. R., 5 Calc., 139. |
| (5) I. L. R., 6 Calc., 60. | |

the will and declared that the trusts ought to be performed, and directed certain enquiries to be made for the purpose of settling a scheme by which to carry out the trust. Before the scheme was finally approved and settled and while the proceedings were pending the case was struck off the board for want of prosecution, on the 14th August, 1875. No steps were taken to have it restored. In 1879 both the plaintiff and defendant died. In the same year, the heirs of the plaintiff instituted a suit against the administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the court of first instance under section 13 of the Code of Civil Procedure, but the appellate court, holding that the original suit was subsisting and might be reconstituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under section 372 of the code. On a petition by the plaintiffs praying that the original suit might be revived and restored to the board, it was held that the legislature did not intend to deal with such applications under the Limitation Act, and that even if Article 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be reconstituted.

(d) In the above case, the court observe that the legislature did not intend to include in the Limitation Act every application to a court with reference to its own list of causes, such as applications to transfer a case from one board to another, to transfer a case to the bottom of the board, change of attorneys, and so forth. In the *Oriental Bank Corporation v. Chariol*,⁽¹⁾ it was held that the court's power to add parties is not affected by limitation.

Does not affect applications for change of attorney, &c., and court's power to add parties.

(e) In *Robart v. Harrison*,⁽²⁾ Wilson, J. observes, "The preamble deals only with 'applications to courts,' and I think the act is limited accordingly. It is also legitimate,

The act of an arbitrator in handing an award to the proper officer to be filed is not an application within this Act.

(1) I. L. R., 12 Calc., 642. | (2) I. L. R., 7 Calc., 333.

I think, to consider the character of the series of applications enumerated, in order to ascertain what an application means: see *Re Ishan Chunder Roy* (8, C. L. R., 52). Now, in the case of all the other applications mentioned in the schedule, the application is one which the court has to deal with judicially by making an order in accordance with the application or dismissing it. I think I should have to do great violence to the ordinary meaning of words, and to disregard all the indications afforded by the Act itself, if I were to hold that the act of an arbitrator, in handing an award to the proper officer to be filed, was an application within the meaning of the Limitation Act."

Attorney's application to court calling his client to show cause why he should not pay his bill of costs is not affected by any law of limitation.

(f) In *Abba Haji Ishmail v. Abba Thara*,⁽¹⁾ an attorney made an application under Rule 149 of the Common Law Rules of the Supreme Court of Bombay, that his client should show cause why he should not pay the balance shown by the Taxing Master's *allocatur* to be due in respect of his bill of costs, and why in default of such payment, attachment should not issue against his person and property. It was held that such an application, not being a suit within the meaning of Act IX of 1871, was not barred by any law of limitation in British India. This ruling is dated July, 1876.

Limitation Act does not apply to application for sale certificate and to applications to do what the court has no discretion to refuse.

The Bombay High Court, following the decision of the Madras High Court, held that the provisions of the Limitation Act do not apply to applications to a court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character, and that Article 178 is not applicable to applications for certificates of sale. *Vithal Janardan v Vithojirav Putlajirav*,⁽²⁾ *Kylasa Gounden v Ramasami Aiyar*.⁽³⁾

(1) I. L. R., 1 Bom., 253. | (2) I. L. R., 6 Bom., 586.
(3) I. L. R., 4 Mad., 172.

PART I. PRELIMINARY.

1. This Act may be called “The Indian Limitation Act, 1877 :” Short title.

It extends to the whole of British India ; but nothing contained in sections two and three or in Parts II and III applies— Extent of Act.

(a) to suits under the Indian Divorce Act,*
or

(b) to suits under Madras Regulation VI of 1831 ; †

and it shall come into force on the first day of October, 1877. Commence-
ment.

(a) This Act came into force on the 1st day of October, 1877, from which date Act IX of 1871 ceased to operate. Generally all suits and proceedings commenced after that date must be governed by the new Act. “In all matters of substantive law, the law of limitation in force at the period of the arising of the right, governs. In all cases of adjective law, the law of limitation in force at the period of enforcement, governs. In some cases, questions of substantive law appear in the disguise of questions of adjective law. Execution however is a proceeding to enforce a decree of a court, and comes under the head of purely adjective law. Such being the case, clearly the

Generally all suits and proceedings commenced after 1st October 1877 must be governed by the Act of 1877.

* The Indian Divorce Act (IV of 1869) relates to Christians and applies to marriages contracted under Act III. of 1872. Unreasonable delay in presenting a petition for dissolution of marriage is a ground for disallowing the petition under the Divorce Act.

† Madras Regulation VI of 1831 is intended to prevent misappropriation of emoluments annexed by the State to hereditary village and other offices in the Revenue and Police Departments ; and to maintain the due efficiency of those offices. Claims to such offices or to emoluments annexed thereto are cognizable by the revenue authorities (Sloan's Code, page 468.)

law prevailing at the time of the application must govern.”
Pasupati Latchmia v. Pasupati Muthambhatlu.⁽¹⁾ The law of limitation governing a suit for debt is that law which is in force at the date of its institution. *Mohesh Lal v. Busunt Kumaree.*⁽²⁾

(b) The Civil Procedure Code X of 1877, which came into force on the 1st October, 1877, contained a clause to the effect “nothing herein contained shall affect the procedure prior to decree in any suit instituted or appeal presented” before October, 1877. In order to arrive at the true construction of the new Civil Procedure Code, it was considered necessary to keep in view the provisions of section 6 of the General Clauses Act I of 1868, which provides that “the repeal of any Statute, Act, or Regulation, shall not affect *anything done*, or any offence committed, or any fine or penalty incurred, or any *proceedings commenced before the repealing Act shall have come into operation.*”

Observations of Westropp, C. J., on the effect of the saving clause in the repealing Act.

(c) In the matter of the petition of Ratansi Kalianji and 6 others,⁽³⁾ Westropp, C. J., observes, “so far as the enactment preserves ‘anything done’ previously to the repealing Act taking effect, it merely embodies the law as previously declared by eminent judges: for example, Lord Tenterden in *Surtees v. Ellison* (9 B. and C, 750; see p. 752) said:—‘It has long been established that, when an Act of Parliament is repealed, it must be considered (*except as to transactions past and closed*) as if it had never existed. That is the general rule; and we must not destroy that by indulging in conjectures as to the intention of the legislature.’ That statement of the rule is adopted *in totidem verbis* by Lord Justice Turner in *Grisewood and Smith’s case*. (4 De G. and J. 544; see p. 557). The same clause in the General Clauses Act in preserving ‘proceedings commenced’ before repealing Acts come into operation, seems to have been penned in the spirit of the doctrine laid down in 1837 by Lord

(1) I. L. R., 1 Mad., 52. | (2) I. L. R., 6 Calc., 340.

(3) I. L. R., 2 Bom., 162.

Denman and his colleagues of the King's Bench in *Hitchcock v. Way* (6 A and E 943, 951), when they said that they were 'of opinion in general that the law as it existed when the action was commenced must decide the rights of the parties in a suit, unless the legislature expresses a clear intention to vary the relation of litigant parties to each other.' "

(d) To apply the new Limitation Act as if its predecessors had not existed, would lead to injustice and deprive persons of their vested rights, and the Act therefore should not be given any retrospective effect. The repeal of a statute cannot, without express words, or clear implication to that effect in the repealing Act, take away a right acquired under the repealed statute or other enactment while it was in force. Act IX of 1871 contained no provision similar to those to be found in the second clause of section 2 of Act XV of 1877, saving titles already acquired by the repealed Acts. Still the Bombay High Court in *Sitaram Vasudev v. Khandarav Bal Krishna*⁽¹⁾ held that although Act IX of 1871, section 2, expressly repealed Regulation V of 1827, it did not affect any prescriptive right or title which had been acquired under that regulation before Act IX of 1871 was passed.

Repeal of a statute cannot take away vested rights.

(e) Act IX of 1871 came into force on the 1st of July, 1871, and section 1 provided against the application of the provisions contained in sections 2 and 3 or in Parts II and III to suits instituted before the 1st of April, 1873. Postponement of the operation of the new Act was intended to give timely notice of its provisions, and it further indicated that from that day, namely, 1st of April 1873, the Legislature intended that the new Act should govern all suits and causes of action which had accrued before that day. Section 2 of Act IX of 1871 unconditionally repealed its predecessor, XIV of 1859, except section 15, from the 1st day of April, 1873. The Bombay High Court in *Abdul Karim v. Mauji Hansraj*⁽²⁾ observe that

Postponement of Sections 2 and 3 and Parts II and III of Act IX of 1871 to 1st April 1873 led to conflicting decisions.

(1) I. L. R., 1 Bom., 286. | (2) I. L. R., 1 Bom., 307.

the law of Limitation applicable to suits subsequently brought upon causes of action which had accrued previously to the day to which the operation of Act IX of 1871 stood deferred, and which had not been barred under previous enactments as well as to suits upon causes of action which accrue afterwards, is Act IX of 1871.

Bombay High Court dissented from the Madras High Court.

(f) In *Chinnasami Iyengar v. Gopalacharya*,⁽¹⁾ suit was filed on the 26th January, 1874, on a pro-note of 16th January, 1871, payable on demand. The High Court held that the suit was barred because the period of limitation ought to be computed as it would have been under Act XIV of 1859, from the date of the note and not from the time of demand, as prescribed by Article 72 of Act IX of 1871. The claim in this case had not been barred under Act XIV of 1859 on the 1st of April, 1873, when Act IX of 1871 came into force, as it had been the case in the cases reported at pages 283, 288 and 298 of the same volume, in all of which the plaintiff's claims had become barred before the 1st of April, 1873, and each defendant had already acquired a right under Act XIV of 1859 to treat the claim against him as barred. Westropp, C. J., in *Abdul Karim*,⁽²⁾ observes with reference to the ruling in *Chinnasawmi Iyengar's* case "it is, indeed, in a certain sense, true, that when once time has commenced to run under a law of limitation, it cannot be stopped. But that rule is dependent on the continuance in force of the enactment under which time has been running. If the statutory pressure be removed by the total repeal of the Act, there is nothing to cause time to run against the creditor, unless the legislature re-enact the old, or substitute some new rule of limitation. The latter course, we think, it did adopt for such suits as that of *Chinnasami Iyengar v. Gopalacharya* by the 72nd Article of Schedule II of Act IX of 1871."

Subsequent decisions of the Madras High Court.

(g) In *Teagaraya Mudali v. Mariappa Pillai*,⁽³⁾ plaintiff sued in September, 1874, for money secured on a

(1) 7 Mad., H. C. Rep., 392. | (2) I. L. R., 1 Bom., 303.

(3) I. L. R., 1 Mad., 264.

registered bond of August, 1867, repayable on the 10th April, 1868. The plaintiff admitted payment of interest by defendant in November, 1868, and April, 1870. The Lower Appellate Court rejected the suit as barred by Act XIV of 1859, holding that payments made before Act IX of 1871 came into force would not give a new period under section 21, which had no retrospective effect. The High Court, referring to *Chinnasami Iyengar v. Gopalacharya*,⁽¹⁾ held in March, 1877, that as Act IX of 1871 did not expressly require that the payment should have been made after the date on which it came into force, payment of interest made before that date, which was a mode of extending the period under that Act, was sufficient to take the case out of the statute. In *Madhavan v. Achuda*,⁽²⁾ plaintiff sued in November, 1875, on a pro-note of November, 1871, payable on demand. The District Judge rejected the suit as barred. The suit was instituted after 1st of April, 1873, when Act IX of 1871 had come into full operation, and the old law had been altogether swept away, and the only guide as to the survival of the remedy by action was section 4 of Act IX of 1871, and its Appendix, schedule II, which allowed to a pro-note on demand three years time counted from the date of demand. Innes, Offg. C. J., observes, "In the face of this positive rule of law, being the only existing rule at the date of the institution of the suit to guide the court in determining whether the action was barred or not, it appears to me that there is no room for the discussion of theories as to whether, when time has once begun to run, the course of it can be interrupted by a new enactment, and the term prescribed by the old law made to give place to a new term springing from a fresh starting point."

(h) With regard to applications for execution of decrees presented after 1st of April, 1873, and up to the introduction of the new Act of 1877 in suits instituted before that date, it was doubted whether they were governed by Act XIV of 1859 or IX of 1871. It was also doubted

What Limitation Act governs execution applications, presented after 1st April, 1873, and after Act IX of 1871 was repealed in suits instituted before that date.

(1) 7 Mad., H. C. R., 392. | (2) I. L. R., 1 Mad., 302.

whether applications for execution presented in such suits after the introduction of the Act of 1877 were governed by that Act or by Act XIV of 1859, while the special provisions contained in section 1 of Act IX of 1871 had been repealed. On this point the decisions of the High Courts have been conflicting, and it was owing to the construction put upon the ruling of the Privy Council, dated June, 1881, in *Mungul Pershad Dichit*,⁽¹⁾ that a thing which applies to an application in a suit, applies to the suit, and that an application for the execution of a decree is an application in the suit in which the decree was obtained, and that as regards suits instituted before the 1st of April, 1873, all applications therein are excluded from the operation of Act IX of 1871. This ruling was based entirely on the special provisions of Act IX of 1871. Even after this Act was repealed by Act XV of 1877, which contained no such provision, the Calcutta High Court held in some cases that execution applications made after XV of 1877, in decrees passed before it came into operation, were governed by Act IX of 1871 which applied to the suit, while the Madras High Court held otherwise.

C. H. held in January, 1878, that Act IX of 1871 governed execution applications made during its operation.

Bombay decision dated December 1876.

(i) In *Unnoda Persad Roy v. Sheikh Koorpan Ally*,⁽²⁾ application for execution was made in June, 1869, and again in August, 1872, after IX of 1871 was in force. Notice under Section 216 of Act VIII of 1859 was issued upon the judgment debtor. When a third application was made in June, 1875, it was held on the plea of the judgment debtor that the decree had been barred when the second application was made in August, 1872. Following the decision in *Jibhai Mahipati v. Parbhu Bapu*⁽³⁾ it was further held that the limitation prescribed by Article 167 of Act IX of 1871 governed all applications for execution made during the time that Act was in force. In the Bombay case, West, J., observes, "It may be rather hard upon the judgment creditor in this case that, although he was doing all that the old law required until the new

(1) I. L. R., 8 Calc., 51. | (2) I. L. R., 3 Calc., 518.

(3) I. L. R., 1 Bom., 59.

law came into force, and, indeed, for some time afterwards, he should suddenly find himself barred by a provision of a much more stringent character than that of the old law, but the change was no doubt made advisedly; and in an analogous case, *Abel v. Lee*. (L. R. VI., C. P. 365), Willes, J., said:—‘I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act of Parliament in order to bring it into accordance with his views as to what is right or reasonable.’”

(j) In *Mungul Pershad Dichit v. Grija Kant Lahiri*⁽¹⁾ the decree was dated July, 1851, and it was under execution from May, 1861, and the last application for execution was dated 22nd September, 1877. The High Court held that the application of the 5th September, 1874, brought the case under the provisions of Act IX of 1871. The Privy Council reversing the decision in May and June, 1881, held that a thing applying to an application in a suit applied to the suit, and that an execution application was an application in the suit in which the decree was obtained, and that as regards suits instituted before the 1st of April, 1873, all applications therein are excluded from the operation of Act IX of 1871. With regard to several cases in which applications for execution in suits instituted before 1st of April, 1873, have been treated as governed by Act IX of 1871, their Lordships remarked that the point was assumed rather than decided.

The above ruling was based entirely on the special provisions of section 1 of Act IX of 1871, that nothing contained in section 2 or in Part II should apply to suits instituted before the 1st of April, 1873.

(k) In *Behary Lall v. Goberdhun Lall*⁽²⁾ the decree holder first sought to execute his decree, dated January, 1877, by an application dated May, 1878. He made his second application in June, 1881. Mitter, J., held that although the Act of 1877 contained no provision corresponding to that of section 1 of the Act of 1871, the Privy Council having ruled that all applications for exe-

P. C. held in June, 1881, that execution application in suit commenced before April, 1873, was governed by the Limitation Act which governed the suit, *vis.*, XIV of 1869.

Nevertheless C. H. applied the ruling of P. C. in July, 1882, to an application of 1881, when Act IX of 1871 had been repealed, to execute decree of January, 1877.

(1) I. L. R., 8 Calc., 51.

(2) I. L. R., 9 Calc., 446.

cution are applications in the suit which resulted in the decree, the application of 2nd June, 1881, must be considered to have been made in a proceeding which commenced before Act XV of 1877 came into operation, and that under section 6 of Act I of 1868 (the General Clauses Act), the repeal of the Act of 1871 by the Act of 1877 cannot affect any proceeding commenced before the repealing Act came into operation. He further observed that the rule that Acts relating to procedure, from the nature of their subject, apply to all pending proceedings from the date of their operation, is confined only to procedure in courts of justice, no way prejudicing any of the parties to the suit. In holding so, he followed the decision of Westropp, C. J., in *Ratansi Kalianji*⁽¹⁾ in which a majority of the Full Bench held, in October 1877, that a judgment debtor imprisoned in satisfaction of decree against him under Act VIII of 1859, which entitled the decree holder to incarcerate him for two years, is not entitled to be released on Act X of 1877 coming into operation, which provided against incarceration for more than six months.

Mitter, J. doubted the correctness of his own decision in the above case, in March 1883.

(1) When in March, 1883, the same question arose before another Division Bench (Mitter and Field, J. J.), in *Radha Prosad Singh v. Sundur Lall* ⁽²⁾ it refused to determine the question whether after the passing of Act XV of 1877, Act XIV of 1859 could be deemed to still govern the execution of any decree whatsoever, though Mitter, J., doubted whether the ruling of the Privy Council would apply to a case in which application for execution was filed after the Act of 1871 had been repealed. In this case the application was made on the 28th March, 1881, to execute a decree, dated 4th August, 1870, passed in a suit filed before 1st July, 1871.

Another Division Bench held in September, 1884, that the Act of 1877 governed all execution applications made after its operation.

(m) When another Division Bench (Prinsep and Macpherson, J. J.), had to deal with the same question in September, 1884, in *Becharam Dutta v. Abdul Wahed*⁽³⁾ it dissented from *Behary Lall v. Goverdhun Lall*, and held

(1) I. L. R., 2 Bom., 148. | (2) I. L. R., 9 Calc., 644.

(3) I. L. R., 11 Calc., 55.

that Act XV of 1877 governed all applications made from the date of its operation. In this case, last application was made in March, 1883, to execute a decree dated January, 1872.

(N) In *Pasupati Latchmia v. Pasupati Mutham Bhatlu*,⁽¹⁾ decree holder sought in 1875 to execute a decree in a suit instituted before the 1st April, 1872, the last application for execution having been made in February, 1872. Although more than three years had elapsed from the date of the last application, the District Judge being of opinion that the old Limitation Act was applicable, held that the application was in time, more than three years not having elapsed from the close of the last proceedings. Holloway, J., held in appeal, that Act IX of 1871 governed the application. He observes "The ordinary rule is very plain. In all matters of substantive law, the law of limitation in force at the period of the arising of the right, governs. In all cases of adjective law, the law of limitation in force at the period of enforcement, governs. In some cases, questions of substantive law appear in the disguise of questions of adjective law. Execution, however, is a proceeding to enforce a decree of a court and comes under the head of purely adjective law. Such being the case, clearly the law prevailing at the time of the application, must govern. Here that law is the new Limitation Act, and the proceeding is therefore barred." In *Prabhacararow v. Potannah*⁽²⁾ it was held in July, 1878, that Act IX of 1871 governed applications for execution of decrees passed before April 1873.

(O) In *Bhikambhat v. Joseph Fernandez* ⁽³⁾ the appellant obtained, on the 13th July, 1872, a decree under section 53 of Act XX of 1866, on a bond specially registered under section 52 of that Act. He applied for the execution of it,—first on the 2nd September, 1872, and again on the 18th August, 1875. The court made an order on the 15th

M. H. execution proceedings coming under the head of adjective law are governed by the law prevailing at the time of the application, June, 1876.

B. H. held in August, 1881, that an application for execution in September, 1878, to enforce a decree of July, 1873, was governed by Act XIV of 1869.

(1) I. L. R., 1 Mad., 52. | (2) I. L. R., 2 Mad., 1.
(3) I. L. R., 5 Bom., 673.

November, 1875, dismissing the proceedings on his second application for execution. The decree not being fully satisfied, he again applied for its execution on the 11th September, 1878. The court following the ruling of the Privy Council in *Mungul Pershad Dichit v. Grija Kant Lahiri Chowdhry*, held that Act XIV of 1859, and not Act IX of 1871, applied to applications in suits instituted before the 1st of April, 1873.

Repeal of Acts.

2. On and from that day, the Acts mentioned in the first schedule hereto annexed shall be repealed to the extent therein specified.

References to Act IX of 1871.

But all references to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act, or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.*

Saving of titles already acquired. Saving of Act IX of 1871, sec. 25.

Agreement without consideration void—

25.* An agreement made without consideration is void unless

(1.) it is expressed in writing and registered under the law unless it is in writing and registered, for the time being in force for the registration of assurances and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2.) it is a promise to compensate wholly or in part a person or is a promise to compensate for something done, who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do; or unless

(3.) It is a promise, made in writing and signed by the person or is a promise to pay a debt barred by limitation law, to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second Schedule hereto annexed may be brought within five years next after the said first day of October, 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years; and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October, 1877, unless where the period prescribed for such suit

Suits for which period prescribed by this Act is shorter than that prescribed by Act IX of 1871.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(a.) A promises for no consideration to give B Rs. 1,000. This is a void agreement.

(b.) A, for natural love and affection, promises to give his son, B, Rs. 1,000; A, puts his promise to B into writing and registers it. This is a contract.

(c.) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e.) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

by the same Act shall have expired before the completion of the said two years.

Provisions of clause 2 are new.

(a) The provisions contained in the second clause of this section are new, and they have been enacted with reference to the decisions of the courts, on the question, whether a statute of limitations repealing its predecessor would revive a right to sue barred under it.

A pro-note of 1869 barred under XIV of 1859, held not revived by IX of 1871.

(b) In *Nocoor Chunder Bose v. Kally Coomar Ghose*⁽¹⁾, plaintiff sued in 1875 on a pro-note of 5th August, 1869, payable on demand, on the ground that he demanded payment in November, 1875. Admittedly no payment had been made, either for principal or interest. Under Act XIV of 1859, which was silent as to the date of the accrual of cause of action on a pro-note on demand, the cause of action had been held to be the date of the note. But Act IX of 1871, repealing Act XIV of 1859, provided for the computation of period from the date of demand. The court held that as a suit on it would have been barred before IX of 1871 began to operate, the subsequent repeal of the former Act would not revive the right to sue.

"Any right to sue" held to be used in widest signification to extend to all applications invoking aid of Court.

(c) The words in this section, "nothing herein shall be deemed to revive any right to sue," should be used in their widest signification, and will include any application invoking the aid of the court for the purpose of satisfying a demand. In *Shumbhoo Nath Shaha v. Guruchurn Lahiri*⁽²⁾ the judgment creditor first sought to execute his decree in March, 1873, again in July, 1876, and again in February, 1878. The contention was, that the application of July, 1876, having been barred by Article 167 of Act IX of 1871, the third application was not entertainable. The lower court rejected the application. In appeal it was contended that, as section 2 of the Limitation Act (XV of 1877) declares that nothing in that Act shall be deemed to affect any title acquired, or to revive any right to sue barred under Act IX of 1871,

(1) I. L. R., 1 Calc., 328.

| (2) I. L. R., 5 Calc., 894.

applications to execute decrees which do not come within those terms, and which, under Act IX of 1871, are incapable of execution, became revived, the more so as, by section 3 of Act XV of 1877, in the definition of the term "suit," an application is expressly distinguished from a suit. It was held that it was not the intention of the legislature by this Act to revive decrees which were dead under the previous laws of limitation, and that the Act cannot be applied to any thing which, at the time of its becoming law, was barred by the law of limitation which it replaced, unless it can be shown that such was the express intention of the legislature, and that such an inference would be opposed to the principles of the law of limitation. This was followed in *Nursing Doyal v. Hurryhur Saha*,⁽¹⁾ in which the creditor advanced the very same argument that was put forth in the former case. Pontifex, J., observes, "No doubt there is some foundation for this argument from the imperfect language used in the Act; but we think that section 2 at least indicates the policy of the Act, and in our opinion the word 'revive any right to sue' used in that section should have their widest signification, which we think would include any application invoking the aid of the court for the purpose of satisfying a demand. It is by no means an uncommon form of speech to say 'sue out in execution.'" As to this point, Mitter, J., in *Jugmohunn Mahto v. Luchmeshur Singh*⁽²⁾ while expressing his concurrence in the above view, observes he concurs in that view not because "right to sue" means "right to sue out execution" but because from this, and other sections in the Act, it is clear that the legislature intended to extend the provisions of this section to proceedings in execution also.

(d) Clause 3, section 2. The object of this clause is, as stated by Melvill, J., in *Ichha Shankar v. Killa*,⁽³⁾ to extend for two years the benefit of the old law in cases in

Clause 3 extends for two years the benefit of the old law.

(1) I. L. R., 5 Calc., 897.

(2) I. L. R., 10 Calc., 748.

(3) I. L. R., 4 Bom., 87.

which a plaintiff would be prejudiced by the application to his case of the provisions of the new law.

"The period of limitation prescribed" includes cases where time is, in effect, shortened by altering the starting point.

(e) In *Appasami v. Aghilanda*,⁽¹⁾ plaintiff sued in November, 1878, on a note payable on demand, dated July, 1870. He alleged that he demanded payment in September, 1876. It was held that "shorter period" includes also the point at which the period, according to the schedule of the old Act, would terminate, and within which suit might have been brought under it had it been in force, and that this suit was not barred. The court observe that the language of Acts IX of 1871, and XV of 1877, leads to the conclusion, that by each of these enactments the starting point and period given in its schedule were to take the place of those given by the Act which preceded it, in the case of all suits instituted after the date of the Act coming into force, and that the expiration of the period, calculated with reference to the Act in force at the date at which the note was executed, does not necessarily affect the remedy.

Time for suit to share in joint family property is shortened by this Act, by altering the starting point.

(f) *Narain Khootia v. Lokenath Khootia*⁽²⁾ was a suit to recover one-third share of the joint family property. It was held that this Act shortened the period by making it to run from the time when the exclusion first became known to the plaintiff, while the corresponding Article of Act IX of 1871 allowed it to run from the time the plaintiff claimed, and was refused his share.

Act XV of 1877 shortens the period to suit against purchaser not in good faith from a mortgagee.

(g) Under the Limitation Act IX of 1871, the period of limitation for suits to recover possession of property purchased from a mortgagee depended upon the good faith of the purchaser. A suit against a purchaser in good faith was barred after twelve years from the date of the purchase, under Article 134 of schedule II. In other cases, a suit might be brought against the purchaser within sixty years from the date of the mortgage under Article 148 of Schedule II. Article 134 of the later Limitation Act XV of 1877, by the omission of the words "in good faith," makes twelve years from the date of the

(1) I. L. R., 2 Mad., 113. | (2) I. L. R., 7 Calc., 461.

purchase the period of limitation for all such suits, without reference to the question of good faith on the part of the purchaser. The result is that, in cases of a purchase *not in good faith* from a mortgagee, the period of limitation allowed by Act XV of 1877, for a suit to recover property, is shorter than the period allowed by Act IX of 1871. This was followed in *Baiva Khan Daud Khan v. Bhiku Sazba*.⁽¹⁾

(h) In *Rup Kishore v. Mohni*,⁽²⁾ plaintiff sued in August, 1879, on a bond of December, 1869, payable on demand. It was held that, under the provisions of this section, the suit having been instituted within two years from the date that the Act came into force, was within time, as this Act shortened the period prescribed by its predecessor. The Bombay High Court took the same view in *Ichha Shankar v. Killa*,⁽³⁾ in which the plaintiff sued on the 21st June, 1878, upon a bond dated 20th April, 1875, promising payment on demand. The Madras High Court held so in *Bandi Subbayya v. Madalapalli Subanna*,⁽⁴⁾ which was a suit brought in April, 1879, upon two pro-notes, dated December, 1874, payable on demand. Demand was said to have been made in September, 1877. The same view was adopted in *Sabapati Chetti v. Chedumbara Chetti*.⁽⁵⁾

Suit on notes payable on demand executed before the Act of 1877.

(i) In *Bansi Dhar v. Harsa Hai*,⁽⁶⁾ plaintiff sued on a registered bond of 2nd March, 1870, payable on demand, alleging that demand was made on the 5th January, 1879. Under Act XIV of 1859, plaintiff had only six years from the date of the bond, while under Act IX of 1871, which came into force before that period expired, he had three years from the date of demand. It was held, that, as the cause of action and the institution of the suit occurred after the repeal of the Act IX of 1871, the claim was barred, as either under Act XIV of 1859, or XV of 1877, limitation began to run from the date of such bond.

Act XV of 1877 held to govern suit on a registered bond of 2nd March, 1870, payable on demand.

(1) I. L. R., 9 Bom., 475.

(2) I. L. R., 3 All., 415.

(3) I. L. R., 4 Bom., 87.

(4) I. L. R., 3 Mad., 86.

(5) I. L. R., 2 Mad., 397.

(6) I. L. R., 3 All., 340.

"Title acquired" in this section does not include a right to sue.

(j) In *Zulfiyar Husain v. Munna Lal*,⁽¹⁾ account stated when Act IX of 1871 operated, was neither signed by the defendant nor his agent. The suit having been brought after the passing of Act XV of 1877, the account stated did not come within Article 64 of schedule II, but the plaintiff affirmed that his right to sue acquired under the former Act was not affected by Act XV of 1877. It was held that the words "nothing herein contained shall be deemed to affect any title acquired" did not save the plaintiff's right to sue on the account stated, a right to sue not being meant by or included in the term, "title acquired," that term denoting a title to property, and being used in contradistinction to a right to sue.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

'plaintiff' includes also any person from or through whom a plaintiff derives his right to sue; 'applicant' includes also any person from or through whom an applicant derives his right to apply; and 'defendant' includes also any person from or through whom a defendant derives his liability to be sued:

'easement' includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon the land of another:

'bill of exchange' includes also a hundi and a cheque:

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if

(1) I. L. R., 3 All., 148.

a specified act is performed, or is not performed, as the case may be :

‘promissory note’ means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

‘trustee’ does not include a benámídar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title :

‘suit’ does not include an appeal or an application :

‘registered’ means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context :

‘foreign country’ means any country other than British India ;

and nothing shall be deemed to be done in ‘good faith’ which is not done with due care and attention.

(a) Section 3* of Act V of 1882 repeals the definition

* 3. Sections 26 and 27 of the Indian Limitation Act, 1877, and the definition of “easement” contained in that Act, are repealed in the territories to which this Act extends. All references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act No. IX of 1871, shall, in such territories, be read as made to sections fifteen and sixteen of this Act.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and
- “Easement” defined.

of "Easement" in this section, and sections 26 and 27 of this Act (XV of 1877) in the territories of Madras, Coorg, and the Central Provinces, and defines that term for the said territories by section 4.

The word "Easement" has a much more extensive meaning than it bears in English Law.

(b) Act IX of 1871 did not define the word "Easement," but the word as interpreted in this section (3, of Act XV of 1877,) has a very much more extensive meaning than the word bears in the English Law, for it includes any right not arising from contract by which one person is entitled to remove and appropriate for his

continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the heritages and owners. owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth: the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Illustrations.

(a.)—A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b.)—A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c.)—A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d.)—A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(e.)—A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and repassing. This right is not an easement.

(f.)—A is bound to cleanse a water-course running through his land and keep it free from obstruction for the benefit of B, a low riparian owner. This is not an easement.

own profit any part of the soil belonging to another, or anything growing, or attached to, or subsisting upon the land of another. An easement therefore under the Indian Law, embraces what in English Law is called a *profit a prendre*,—that is to say, a right to enjoy a profit out of the land of another.

(c) A prescriptive right of fishery is an easement as defined by this section. White, J., observes, “The legal meaning of land is not only dry land, but also land covered by water; and I see no reason for holding that the word ‘land,’ as used in section 3, bears other than the legal meaning which ordinarily attaches to the word. Taking ‘land’ to have this meaning, fish may properly be said to grow or subsist upon it.” The language of the proviso, contained in section 27 of the Act, makes it clear that the profit arising from water, as well as from land, was in the contemplation of the legislature. Right of fishery is one of the most common classes of property enjoyed in the Bengal Presidency. *Chundee Churn Roy v. Shib Chunder Mundul*.⁽¹⁾

Prescriptive
right of fishery
is an Easement.

Such right is
common in Ben-
gal.

(1) I. L. R., 5 Cal., 945.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

Dismissal of suits, &c., instituted, &c., after period of limitation.

4. Subject to the provisions contained in sections five to twenty-five (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.)—A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The appellate court must dismiss the suit.

(b.)—An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

The wording of this section and its proviso is exactly similar to the corresponding section of Act IX of 1871.

The obligation resting on first Court to reject barred suits is not laid on each successive courts.
June 1884.

(a) In *Dattu v. Kasai*⁽¹⁾ the Plaintiff's suit, to recover certain lands, was dismissed by the Court of first instance, and by the Lower Appellate Court, but on second appeal, was remanded for determination of plaintiff's alleged right of perpetual cultivation of the land. On remand,

(1) I. L. R., 8 Bom., 535.

the District Judge gave a decree in favour of the plaintiff. The defendant appealed to the High Court, and then for the first time raised the point of limitation. It was held that the objection was taken too late. The defendant had the opportunity of raising his objection under the Limitation Act, and if necessary, of getting any question on which it depended tried by the courts below ; and as he took no steps to this end, he should be taken to have waived his right to raise the objection. The omission of the court of first instance to reject the claim, if erroneous, gave the defendant a right of appeal, which he might renounce, and virtually did renounce. The obligation resting on the court of first instance to reject a plaint, which on the face of it is barred by limitation, is not expressly laid on each successive court whenever the objection comes to view, and ought not to be assumed by inference. The High Court have held "the duty of rejecting the suit under such circumstances as the present is not expressly laid on the High Court and ought not, we think, to be assumed by inference."

(b) In *Chunder Mohun Roy v Bhubon Mohini Dabee*,⁽¹⁾ a petition to sue *in formâ pauperis*, put in within the time specified in the Limitation Act for the suit, was rejected for the appellant's failure to appear and give evidence. At the petitioner's instance, the case was re-opened, and a day fixed for her appearance. Two days prior to this date, but some time after the expiry of the period fixed by the Limitation Act for the suit, the petitioner put in a petition stating that the suit be tried in the ordinary way, and paid in the regular amount of stamp duty for an ordinary suit. The question was, whether the plaint should be considered to have been filed on the day that such application was made, or whether the petitioner can take advantage of the clause in this section, which says, that a suit in the case of a pauper is instituted when his application for leave to sue as a pauper is filed. It was held that the petitioner, having put in the petition

C. H.
Pauper applicant during pendency of application, putting in petition with stamp duty required for the suit, held not entitled to have the date of first petition treated as date of institution of suit, (April 1877.)

(1) 1 L. R., 2 Calc., 389.

electing to proceed as an ordinary suitor and not as a pauper, stood merely in the same position as if she had filed her suit on that date, and that the suit was barred, and that in order to give her the benefit of that explanation, it was necessary that her original application to sue as a pauper should have been granted, and the application numbered and registered as a suit.

P. C.
Date of presentation of application, and not date of payment of court fee on application to sue as pauper, is date of institution of suit. (May 1876.)

(c) In *Skinner v. Orde*,⁽¹⁾ a Division Bench of the Allahabad High Court, held on the 29th May, 1876, that, where a pauper application is numbered and registered, not on proof of pauperism, but in consequence of the applicant abandoning his claim to sue as a pauper, and paying court fee required for the suit, the date of such payment and not the date of application must be taken in computation the period of limitation to be the date of the institution of the suit. When the matter went in appeal before the Privy Council, their Lordships reversed the decision of the High Court, and held that the suit must be deemed to be instituted when the application was filed and not when the proper stamp was affixed.⁽²⁾ In *Ramsahai Sing v. Mani Ram*,⁽³⁾ The High Court on revision permitted an applicant who wished to sue as pauper to renew his application to the Lower Court which rejected it. The Sub-judge verbally rejected the second application, stating he would deliver a written judgment. Before it was delivered, the applicant, offering to pay the court fee, asked the court to take the petition as a plaint filed on the date of the first application, but it was refused. The High Court declining to interfere with the order, observe, that at the time the Sub-judge passed the order, Skinner's case had not come out to this country, and that at any rate it does not appear that it was brought to the Judge's attention.

Return for amendment and re-presentation will not constitute fresh institution.

(d) In *Ram Lal v. Harrison*,⁽⁴⁾ plaint for money due on an instrument of hypothecation, dated 23rd November, 1866, was presented on the 21st November, 1878; the

(1) I. L. R., 1 All. 230.

(2) I. L. R., 2 All., 241.

(3) I. L. R., 5 Calc., 807.

(4) I. L. R., 2 All., 832.

plaint also sought to hold the property liable. The plaint was returned for correct description of property, and was re-presented on the 8th January, 1879. The Lower Appellate Court being of opinion that the claim to enforce a charge must be taken to have been instituted on the date of re-presentation, rejected it as barred. It was held, that the return of a plaint for amendment and subsequent presentation and acceptance by the court, will not constitute a fresh institution, though the substitution or addition of a person as new plaintiff or defendant, some time after the institution of the suit, shall make the suit as regards him to be treated as instituted when he was so made a party.

Suit already filed to be treated as new, as to party since added.

(e) *Khem Karan v. Har Dayal*⁽¹⁾ was a suit to enforce pre-emption, instituted against the vendor and the purchasers who were minors, on the 1st June, 1880. Sale Deed was registered on 9th June, 1879. After the institution of the suit, plaintiff discovered that the vendees were minors, and obtained on the 15th June, 1880, an order appointing a guardian. It was argued that no suit was in reality instituted until the date of the guardian's appointment. It was held that the suit was instituted on the day the plaint was presented.

Suit against minors, instituted when plaint was presented and not when appointment of guardian *ad litem* made.

(f) In *Gulab Rai v. Mangli Lal*,⁽²⁾ it was held, that an order rejecting a memorandum of an appeal as barred by limitation is a decree within the meaning of section 2 of the Civil Procedure Code, and it is therefore appealable, and not open to revision by the High Court under section 622 of the Code. In *Gunga Dass Dey v. Ramjoy Dey*⁽³⁾ it was held, that an order dismissing an appeal as presented out of time under this section, is "a decree passed in appeal" within the meaning of section 584 of the Civil Procedure Code of 1882, and a second appeal will, therefore, lie from such order.

Order rejecting Appeal Memo. as barred is a decree appealable.

(g) In *Mahomed Hossein v. Purundur Mahto*,⁽⁴⁾ the Lower Appellate Court was of opinion that as the court executing the decree had no jurisdiction to entertain the

This Section does not take away the Court's jurisdiction in respect of an application in any

(1) I. L. R., 4 All., 37.

(2) I. L. R., 7 All., 42.

(3) I. L. R., 12 Calc., 30.

(4) I. L. R., 11 Calc., 287.

way. Erroneous decision that an application is not barred is not a nullity until set aside.

decree-holder's application for the sale of the disputed property in consequence of the decree being barred by limitation, the sale itself was a nullity. The High Court observe "section 4 of the Limitation Act directs that an application made after the period prescribed in the Act shall be dismissed. This direction in the section in question does not take away the jurisdiction of the court in respect of the application in any way. If the court erroneously holds that the application is not barred, the order of the Court, though erroneous and liable to be set aside in the way prescribed in the procedure law, is not a nullity, but remains in full force until set aside. Therefore, the sale held in this case was a valid sale until it was set aside."

Government were held not entitled to exemption from limitation as to applications.

In *Shami Mohammed v. Mahommed Ali Khan*,⁽¹⁾ it was held in January, 1869, that the right of Government to recover stamp fees in pauper suits under section 309 of Act VIII of 1859, was not affected by the limitation contained in section 20 of Act XIV of 1859, as section 17 exempted public claims from that Act. In the *Collector of South Arcot v. Thatha Charry*,⁽²⁾ five years after the dismissal of a pauper suit, Government sought recovery of the stamp duty by attachment and sale of the pauper's property. It was held in April, 1875, that the claim was not barred. In *Appaya v. The Collector of Vizagapatam*,⁽³⁾ which was an application by Government under section 411 of the Code of Civil Procedure, to recover the amount of court fees due under a decree from the defendant, it was held that the Government were not entitled to any exemption from the provisions of the Limitation Act of 1877, relating to applications. The court observe, "We are of opinion that the Government is not entitled to any exemption from the provisions of the Limitation Act relating to applications. If the maxim on which the counsel for the crown relies applies to this country—and the Crown is not bound by the provisions of any Act

(1) 2 B. L. R., App., 22. | (2) 8 Mad., H. C. R., 40.

(3) 1. L. R., 4 Mad., 155.

unless they are expressly declared binding on the Crown—it may be inferred from the circumstance that this Act contains provisions prescribing a *Limitation* to the Government for the institution of suits and presentation of criminal appeals, that the legislature contemplated that the Crown should be subject to the provisions of the Act, and should enjoy a privilege to the extent expressed and no further.”

5. If the period of limitation prescribed for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, presented, or made on the day that the court re-opens :

Proviso where court is closed when period expires.

Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the court that he had sufficient cause for not presenting the appeal or making the application within such period. *

Proviso as to appeals and applications for review.

(a) The discretionary power allowed to Courts by the second clause of this section does not extend to applications other than an application for review. It has been held that the language of the section does not permit of the indulgence provided for in the second clause being shown to an applicant for leave to appeal as a pauper, while a pauper may apply for a review of judgment availing himself of the indulgence. (*vide Note T.*)

The second clause is held inapplicable to an applicant to sue as pauper.

(b) In *Gulam Husen Mahamed v Sayad Musa Miya Hamad Ali*,⁽¹⁾ the original decree of the Subordinate Judge was modified on the 21st March, 1882, by the

Pendency of second appeal and ignorance of legal effect of judgment no excuse for delay in applying for review.

(1) I. L. R., 8 Bom., 260.

* Bill No. 23 of 1886, introduced into the Imperial Council on the 1st September, 1886, proposes the extension of the provisions of this section of the Limitation Act applicable to an appeal, to the objection and notice under section 561 of the Civil Procedure Code of 1882. The bill also proposes amendment of the first proviso to the first paragraph of section 561.

District Judge by the reduction of the amount of cess illegally levied, and the High Court, on the 23rd June, 1882, dismissed the second appeal on the ground that the Lower Courts had no jurisdiction as the suit was a Small Cause suit. In July, 1882, when the plaintiff brought another suit to recover the cess illegally levied since the former suit, the Judge held that the defendant was estopped from disputing the plaintiff's claim. On the 18th November, 1882, the defendant applied for a review of the District Court's decree, dated 21st March, 1882, and the District Judge granted it. It was held by a Division Bench that the circumstances did not justify the admission of the application for review after the expiration of the ninety days allowed by the Limitation Act, and that the pendency of an appeal is not "a sufficient cause" for not applying earlier within the meaning of this section, and that an applicant for review cannot plead his ignorance of the effect of the judgment as a justification for his delay.

Counsel's failure to read a deed is not "sufficient cause" within the meaning of this section.

(c) In *Gopal Chandra Lahiri v. Solomon*,⁽¹⁾ judgment was given on the 5th of February, 1885, the decree was signed on the 25th day of February, 1885; but the application for review was not made until the 9th of April, long after the 20 days prescribed by the Limitation Act had expired. That counsel did not read the deed until the 30th of March, when he did so for the purpose of a proceeding in another suit, was said to be "sufficient cause" within the meaning of this section for not making the application within 20 days. Garth, C. J., held that there was no "sufficient cause," observing that if this was a sufficient excuse it would be an equally good excuse for delaying for a year or more whenever the learned counsel might happen to read its contents.

This section applies to special limitation provided for by other Acts for suits.

(d) *Golap Chand Nowluckha v. Krishto Chunder Dass Biswas*,⁽²⁾ was a suit brought to recover money or obtain papers or accounts from an agent, and it was to be instituted under section 30 of the Bengal Act VIII of 1869, within one year from the determination of the agency.

(1) I. L. R., 13 Calc., 62. | 2) I. L. R., 5 Calc., 314.

As on the last day of such year, the courts were closed, it was filed on the first day of the re-opening of the court. It was held that the plaintiff was entitled to the benefit of this section. This was followed in⁽¹⁾ *Khoshelal Mahton v. Gunesh Dutt*.

(e) *Thir Sing v. Venkataramier*⁽²⁾ was brought to set aside the decision of a Revenue Settlement officer passed on the 12th September, 1876, under section 25 of Act 28 of 1860 (Madras) and for possession of the hill in dispute. The decision of the Settlement Officer was confirmed in appeal on the 23rd October, 1876. As the 12th November was Sunday, this suit was brought on the 13th November, 1876. According to the true construction of section 25, the decision against which an appeal is allowed in the form of a regular suit is the original decision of the Settlement Officer and not that of his superior passed on revision; and unless time is extended by the Governor-in-Council, the appeal must be brought within two calendar months from the date of the original decision. It was held that the exceptions contained in section 5 of Act IX of 1871, which has been reproduced in the Act of 1877, apply only to cases dealt with under the General Act of Limitation, and that in the absence of a special provision applicable to special laws, the general rule, that when limitation once begins to run, it continues to run and its operation is not liable to be suspended either on Sundays, holidays, or during the recess of courts, is applicable.

M. H. held this section to apply only to cases dealt with under the general Act of limitation.

(f) In *Nijabutoola v. Wazir Ali*,⁽³⁾ which was a suit under the Indian Registration Act, it was held, that the interpretation of this section considered along with section 6, is that, except as defined in section 6, the general provisions of the Limitation Act are applicable to cases for which periods of limitation are specially provided by local or special laws; and that therefore section 5 of the Limitation Act ought to have been allowed to operate in the present case.

This section applies to suits under Registration Act.

(1) I. L. R., 7 Calc., 690. | (2) I. L. R., 3 Mad., 92.

(3) I. L. R., 8 Calc., 910.

If office was open for reception of appeals, &c., during adjournment, court is not closed.

(g) Where a District Court was adjourned for two months, but the notification stated that the court would be open twice a week for the reception of plaints, petitions, and appeals, it was held that the court was not closed till the last day of the adjournment within the meaning of this section so as to allow an appellant to present his appeal on the day the court re-opened after the adjournment, the appeal time having expired during the adjournment. *Nachiyappa v. Ayyasami*.⁽¹⁾

Party can deduct the time the Court was closed though it re-opened on a later day.

(h) Where the period of limitation prescribed for a suit expired when the court was closed for a vacation, and the court, instead of re-opening after the vacation on the day that it should have re-opened, re-opened on a later day, and the suit was instituted when it did re-open; it was held that the suit was instituted within time, since the section does not refer to vacation or holidays. *Bishan Chand v. Ahmad Khan*.⁽²⁾

Appeal, if time expired during vacation, may be admitted on the re-opening day.

(i) In *Hariette A. King v. J. S. King*,⁽³⁾ it was held, that where the period of limitation for the filing of an appeal has expired during vacation, a party to a suit has a right under the provisions of the Limitation Act XV of 1877, to have his appeal admitted on the day the court re-opens, and the Prothonotary of the High Court has power to receive and file a memorandum of appeal on that day.

Circumstance contemplated in section 14 is sufficient cause for not presenting appeal in time.

(j) In *Balwant Singh v. Gumani Ram*,⁽⁴⁾ appeal was presented one day after the time, and the appellant pleaded that he was engaged down to the last day in making an application in revisional jurisdiction which was rejected for want of jurisdiction to entertain it in revision. It was held that section 14 was limited to courts of original jurisdiction merely because this section had given larger and unfettered power in the same behalf to Appellate Courts and that the circumstances contemplated in section 14 would ordinarily constitute a sufficient cause in the sense of this section for not presenting an appeal within time.

(1) I. L. R., 5 Mad., 189.

(2) I. L. R., 1 All., 263.

(3) I. L. R., 6 Bom., 487.

(4) I. L. R., 5 All., 591.

(k) In *Moshaullah v. Ahmedullah*⁽¹⁾ original decree was passed on the 27th September, 1883. The plaintiff applying for a review on the 12th December, 1883, obtained a decree in his favor on the 27th February, 1884. Defendant applied to the High Court for leave to appeal in *forma pauperis* and on the 6th of January, 1885, an *ex-parte* order was passed that the appeal be registered on payment of the court fee. When the appeal came on for hearing, it was held, on the objection of the respondent, that poverty was not "sufficient cause" within the meaning of this section, and that the appeal was barred.

Poverty is not "sufficient excuse" for admitting appeal after time.

(l) An Appellate Court should not admit an appeal after the period of limitation prescribed therefor, without recording its reasons for being satisfied that there was sufficient cause for not presenting it within time. In *Zaibulnissa Bibi v. Kulsum Bibi*,⁽²⁾ the Lower Appellate Court admitted the appeal presented one day beyond the period allowed, recording that it should excuse the delay which the appellant verbally stated was the result of miscalculation. It was held that an error in the calculation was not sufficient cause for the delay.

Court should record reasons for admitting appeal after time.

Error in calculation is not sufficient cause.

(m) In *Raghunath Gopal v. Nilu Nathaji*,⁽³⁾ suit was rejected on the 21st December, 1882. On plaintiff's application for review on the 1st February, 1883, the court thought that the proper course was to appeal. On the 3rd June, 1883, the plaintiff appealed, but the District Judge rejected it as barred without recording his reasons. The High Court discharged his order and directed him to make a fresh order with due regard to the observations they had made in the judgment.

Should also record reasons for dismissing appeal as barred.

Order discharged for not recording reasons

(n) In *Chunder Does v. Boshoon Lall Sookul*,⁽⁴⁾ it was held, that it was competent for the High Court in second appeal to look into grounds which a judge has given for admitting an appeal after the lapse of the period limited for the purpose.

High Court in 2nd Appeal can examine the Lower Court's grounds for admitting appeal after time.

(1) I. L. R., 18 Calc., 78.

(2) I. L. R., 1 All., 250.

(3) I. L. R., 10 Bom., 452.

(4) I. L. R., 8 Calc., 251.

Sub-Judge cannot override District Judge's order admitting appeal.

(o) In *Jhotee Sahoo v. Omesh Chunder Sircar*,⁽¹⁾ it was held that a Sub-judge could not override the order of a District Judge admitting an appeal, and that he had only jurisdiction to hear the appeal on its merits.

B. H. declined interference with District Judge's refusal after enquiry to admit an appeal after time.

(p) In *Ranchodji v. Lallu*,⁽²⁾ it was held that where the law leaves a matter within the discretion of a court, and the court, after a proper enquiry and due consideration, has exercised the discretion in a sound and reasonable manner, the High Court would not interfere with the conclusion arrived at, even though it would itself have arrived at a different conclusion, and that consequently, where a District Judge, after due enquiry, refused to admit an appeal presented after time, the High Court would not interfere with his order. In this case, the District Judge found that the appellant appeared to have endeavoured to mislead him by falsehood or at least by prevarication.

Appeal held as preferred when memorandum was first presented and not when represented on return for insufficiency of stamp without fixing time.

(q) In *Sheo Partab Narain Singh v. Sheo Gholam Singh*,⁽³⁾ appellant presented the appeal on the 23rd June, 1879, within the time. On the 5th July, the Lower Appellate Court returned it for insufficiency of stamp without fixing time for representation. On the 18th July, 1880, the party represented it, but the Lower Court rejected it as barred. It was held, that for the purpose of limitation, an appeal is preferred when the memorandum of appeal is presented to the proper officer and not when, where the memorandum of appeal is insufficiently stamped and is returned in order that the deficiency may be supplied, it is again presented, and that the court should fix a time for representation.

So an appeal Memo. represented on return for amendment without fixing time.

(r) Where an appellant presented an appeal within the period of limitation prescribed therefor, and the Appellate Court returned the memorandum for amendment without fixing time for the purpose, the memorandum represented, some days after the period of limitation, was held as presented within time, the date of its presentation being the date it was first presented. The

(1) I. L. R., 5 Cal., 1. | (2) I. L. R., 6 Bom., 304.
(3) I. L. R., 2 All., 876.

Appellate Court should specify the time for such correction. *Jagan Nath v. Lalman*.⁽¹⁾ This was followed in *Sheo Partab Narain Singh v. Sheo Gholam Singh*.⁽²⁾

(s) In *Degamber Mozumdar v. Kallynath Roy*,⁽³⁾ it was held in July, 1881, that the 7 days' time within which a notice of objection to a decree by a respondent under section 561 of the Code must be given, is not a period to which the provisions of paragraph 2 of section 5 of the Limitation Act can be extended, and the court has no discretion to extend the period. This was followed in *Kally Prosunno Biswas v. Mungala Dasse*,⁽⁴⁾ in which it was held that the provision of the 2nd clause does not apply to anything except an appeal or application for review of judgment.

Clause 2 of this section does not apply to the 7 days' time under section 561 of the C. P. C. of 1877. Bill No. 23 of 1886 proposes extension of section 5 of the Limitation Act applicable to Appeals, to notice under section 561 of the C. P. C. of 1882.

(t) In *Lakshmi v. Ananta Shanbaga*,⁽⁵⁾ the decree was dated 21st December, 1877, and the application for leave to appeal as a pauper was not made till 25th July, 1878. There was a delay of 66 days after deducting 30 days allowed by Article 170, and the date of the judgment and the time occupied for obtaining a copy of the decree under section 12 of the Limitation Act. In section 4, suits, appeals, and applications are separately mentioned, while, in section 12, an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment are separately named, and the language used does not leave room for the suggestion that it was intended to class an application for leave to appeal as a pauper under the head of appeals. The court rejecting the application under section 4, on the ground that the indulgence shewn to an ordinary applicant in this section is not extended to an application for leave to appeal as a pauper, observe:—"Although it may appear strange that the same indulgence should not be shown to a pauper applying for leave to appeal as to an ordinary appellant, and that, while a pauper may apply for a review of judgment with the same indulgence as to delay in making

The terms of this section do not admit of the indulgence therein provided for being shown to an applicant for leave to appeal as a pauper.

Strange that the indulgence should not be shewn to a pauper applying for leave to appeal.

(1) I. L. R., 1 All., 260.

(2) I. L. R., 2 All., 875.

(3) I. L. R., 7 Calc., 654.

(4) I. L. R., 9 Calc., 631.

(5) I. L. R., 2 Mad., 280.

the application as a person who is not a pauper, yet, in making his application for leave to appeal, similar indulgence is not extended to him; the language of the Act precludes, we think, any other construction of it upon this question than that contended for."

Negligence of an appellant's attorney is not sufficient cause under this section.

(U) In *The Corporation of the Town of Calcutta v. Anderson*,⁽¹⁾ the plaintiff sued to recover damages from the Calcutta Municipal Corporation, the contractor under them and the Secretary of State. The lower Court decreed the plaintiff's claim as against the Corporation and the contractor, and dismissed the claim as against the Secretary of State, with costs. Against this decision, dated 27th June, 1883, the Municipal Corporation appealed on the 20th July, 1883, giving notice of the same to the plaintiff's attorney on the same date. On the 8th January, 1884, plaintiff's attorney filed an affidavit of delay, alleging that, till then, he did not notice that the Secretary of State was not a party to the appeal, and prayed for permission to allow him to appeal against the Secretary of State. It was held that mere negligence on the part of the appellant's attorney is not a sufficient explanation of delay under this section.

Appeal by one memorandum against first decree after time and second decree on review, admitted by the lower Court, was rejected by the High Court as irregular. (The case is a peculiar one.)

(V) In *Moti Bibi v. Bikanu*,⁽²⁾ *B* sued *M* and *T* for money due on a bond, and on the 27th April, 1877, obtained a decree against *T*; the suit against *M* being dismissed. *T* applied for a review of judgment, and *B* also made a similar application. On the 25th May, 1877, *T*'s application was granted, and on the 16th July, 1877, *B*'s was rejected. On the 29th June, 1878, the court re-heard the suit against *T* and dismissed it. *B* appealed, making *T* and *M* respondents, and impugning in his memorandum of appeal the decree of the 27th April, 1877, as well as that of the 29th June, 1878. The Appellate Court assuming that the appeal was one from the decree of the 27th April, 1877, preferred beyond time, admitted it after time, and after hearing the case on its merits, gave a decree against *M* and dismissed the suit

(1) I. L. R., 10 Calc., 445. | (2) I. L. R., 2 All., 772.

as regards *T*. It was held that the Appellate Court erred in assuming that the appeal was from the decree of the 27th April, 1877, and that it was at liberty to admit it beyond time, the appeal being from the decree of the 29th June, 1878, that decree being the one which had brought *B* before that court as an appellant, and that the Appellate Court was not competent on an appeal from the decree of the 29th June, 1878, to reconsider the merits of the case against *M*, the appeal from the decree of the 27th April, 1877, being barred by limitation, and that decree and the decree of the 29th June, 1878, being separate and distinct, and not appealable in one memorandum of appeal from the latter decree. The High Court observe, that if the plaintiff was desirous of appealing from the decree of April, 1877, he might have done so within the time allowed by law, or if under any misapprehension he had allowed that period to run by, he should have presented his memorandum of appeal, assigning reasons for not presenting his appeal within such period. Had he done so, the court under this section might have admitted the appeal after time if satisfied that the appellant had sufficient cause for not making his application within time. This course the plaintiff did not adopt.

6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

Special and local laws of limitation.

(2.) This section allows the period of limitation provided for by any special or local law to remain unaffected, while the corresponding section of the old Act

C. H.
General provisions of the Limitation Act of 1877 were held to apply to cases for which limitation is provided by local or special law.

Bengal Act VIII of '69, was repealed by the Bengal Tenancy Act VIII of 1885. The Legislature, with a view to avoid all doubts and uncertainties as to the extent of the application of the general provisions of the Limitation Act to suits under that Act, prescribed, by Schedule III, special limitation of six months, one, two, three years for suits expressly named therein, and thirty days for appeals and three years for execution of decrees, providing at the same time by

IX of 1871, provided, "nothing herein contained shall affect such law." In the wording of this section there is nothing to forbid the application of the general provisions for computing the period of limitation contained in Part III of this Act to special and local Acts providing special limitation to suits and applications. In *Golap Chand Nowluckba v. Krishto Chunder Dass Biswas*,⁽¹⁾ which was a suit under section 30 of the Bengal Act VIII of 1869, plaintiff was held entitled to the benefit of section 5 of this Act. In *Nijabutoola v. Wazirali*,⁽²⁾ which was a suit under the Indian Registration Act, it was held, that the general provisions of the Limitation Act are applicable to cases for which periods of limitation are specially provided by local and special laws. In *Khetter Mohun Chuckerbutty v. Dinabashi Shaha*,⁽³⁾ which was a suit under the Registration Act, plaintiff was held entitled to the benefit of section 14 of the Act.

Bombay High Court also held so.

(b) In *Guracharya v. The President of the Belgaum Town Municipality*,⁽⁴⁾ which was a suit under the Bombay Municipal Act VI of 1873, the Bombay High Court, following the above decisions of the Calcutta High Court, held that the plaintiff was entitled to the benefit of section 14 of the Act.

M. H. held in 1896, that Suits cognisable by Village Munsifs are not excluded from the Limitation Act of 1877.

(c) In *Erajalu v. Mayan*,⁽⁵⁾ plaintiff sued before a Village Munsif on the 17th November, 1884, for money due on a bond which had become payable on the 14th November, 1880. The Village Munsif decreed the suit. The District Judge, being of opinion that the decision was illegal, inasmuch as the Limitation Act contained no such

(1) I. L. R., 5 Cal., 314.

(2) I. L. R., 8 Cal., 910.

(3) I. L. R., 10 Cal., 265.

(4) I. L. R., 8 Bom., 529.

(5) I. L. R., 9 Mad., 118.

section 184, for dismissal of suits, appeals and applications instituted after the period of limitation prescribed by the schedule. Section 185 makes sections 7, 8 and 9 of the Limitation Act of '77 inapplicable to the suits and applications named in section 184; but Clause 2 of that section provides for the application of the provisions of the Limitation Act of 1877 to all suits, appeals and applications mentioned in section 184, subject to the provisions of sections 184 and Clause I of 185.

exception as in section 6 of the C. P. C., referred the case to the High Court for orders. Hutchins, J., observes, "It is true that Section 6 of the Limitation Act provides that nothing contained in the Act shall alter or affect a period specially prescribed by any special or local law for any suit, appeal or application, but section 5, Regulation IV of 1816, can hardly be said to prescribe a period of limitation for any particular suit or class of suits. It simply prohibits a Village Munsif from taking cognizance of any suit, whatever its nature, unless the cause of action has arisen within twelve years. It would be unreasonable to suppose that when prescribing different periods of limitation for different suits according to their nature the legislature intended to preserve a rule of limitation applicable only to a particular class of tribunals, and which would entirely defeat their object in regard to all suits which might be brought before such tribunals."

(d) *Thakoor Kapilnauth Sahai Deo v. The Government*⁽¹⁾ was a suit to recover property confiscated under Act XXV of 1857 relating to the seizure of property of the rebels. Section 9 of the Act provided for the institution of a suit within one year from the seizure of the property. Although that Act had been repealed, it was held that as there was no exception in the Act (XXV of 1857) in favor of infants, the plaintiff was not entitled to deduct the time during which he was under the disability of minority. In *Purran Chunder Ghose v. Mutty Lal Ghose Jahira*,⁽²⁾ which was a suit for rent under section 29 of the Bengal Act VIII of 1869, filed the day following the last day of the term which was a close holiday, it was held that Act IX of 1871 cannot be applied for relaxing the term, although the general law of limitation contained in Act IX of 1871 were not the same as they were in Act XIV of 1859.

C. H. held Act IX of 1871 inapplicable to suits instituted under Act XXV of 1857 and Bengal Act VIII of 1869.

(e) The Allahabad High Court observed that the plaintiff in a suit brought under Act XVIII of 1873, section 95, for possession was not entitled to the benefit of

A. H. observed section 15 of Act IX of 1871 inapplicable to a suit under local law.

(1) 13 B. L. R., 445.

(2) I. L. R., 4 Calc., 50.

section 15 of Act IX of 1871. In holding so, they followed the rulings of the Privy Council to the effect that the corresponding section 14 of Act XIV of 1859 did not apply to suits under Act X of 1859. (*vide Note F.* under section 14.)

M. H. held section 5 of Act IX of 1871 inapplicable to appeals under local laws.

(f) In *Thir Sing v. Venkataramier*,⁽¹⁾ which was an appeal allowed in the form of a regular suit under the Madras Boundary Act XXVIII of 1860, it was held that the exceptions contained in section 5 of Act IX of 1871 applied only to cases dealt with under the general act of limitation, and that in the absence of a special provision applicable to special laws, the general rule that when limitation once begins to run, it continues to run and its operation is not liable to be suspended either on Sundays, holidays or during the recess of courts, was applicable. In *Re Sied Mohidin Sahib*,⁽²⁾ the Madras High Court doubted whether the provisions of Act IX of 1871, for excluding the time requisite for obtaining a copy of the decree, could be applied to appeals under the Madras Rent Act VIII of 1865, but in *Krishnasami Muppanar v. Sankara Row Peshur*,⁽³⁾ they held that the provisions were not applicable to appeals under the Madras Rent Act.

P. C. on Act XIV of 1859. The saving clauses with respect to minors and parties under disability to sue contained in Act XIV of 1859 held inapplicable to a suit against Government under Act IX of 1859 for possession of confiscated property.

(g) Certain property, in the actual possession of a rebel, was confiscated by the Government in 1858. In a suit brought on 1st May, 1865, to recover the property, it appeared that the plaintiffs were the sons and heirs of one M, who died in 1854, legally entitled to, though not in possession of the property in question; that at the date of his death, and at the date of the confiscation, the plaintiffs were minors, and that they came of age in 1861 and February 1864, respectively. It was held that the suit not having been brought within one year from the date of the confiscation, was barred by section 20, Act IX of 1859. There is no saving clause in Act IX of 1859 with respect to minors or parties under disability to sue, and such saving cannot be held to be implied upon any

(1) I. L. R., 8 Mad., 92. | (2) 8 Mad., H. C. R., 44.

(3) Mad., L. R., 271.

principle of equitable construction; nor can the saving clauses contained in the General Limitation Act XIV of 1859 be imported into a special enactment. *Mahomed Bahadur Khan v. The Collector of Bareilly.*⁽¹⁾

(h) In *Phoolbas Koonwur v. Lalla Jogeshnur Sahoy*,⁽²⁾ the Privy Council observed, that looking to the third and eleventh sections of Act XIV of 1859, there was no doubt that the intention of the legislature was that the period of limitation contained in section 246 of Act VIII of 1859, should in the case of a minor be modified by section 11 and 12 of Act XIV of 1859. From this case they distinguish-
ed *Mahomed Bahadur Khan* on the ground that it was decided on an act of a very special nature.

S. S. 11 and 12 of Act XIV of 1859 held to apply to the limitation under S. 246 of Act VIII of 1859.

7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

Legal disability.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased as would otherwise have been allowed from the time so prescribed.

Double and successive disabilities.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period

(1) 18 B. L. R., 292.

| (2) I. L. R., 1 Calo., 226.

after the death as would otherwise have been allowed from the time so prescribed.

Disability of representative.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a).—The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b).—A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(c).—A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d).—A right to sue accrues to X during his minority. X dies before attaining majority and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e).—A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer, A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(f).—A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

(a) Inability referred to in Section 9 must be held also to be a personal inability affecting the plaintiff himself such as the legal disabilities referred to in this section.

Personal disability in this section has reference to inability in section 9.

Hanmantrám Sadhurám Pity v. Arthur Bowles.⁽¹⁾

(b) This section is in substance similar to sections 11 and 12 of Act XIV of 1859, under which it was held that the benefit of the above two sections is not limited to the period when the disability of minority has ceased, but applies also to the period during which the disability continues, and that a minor, who through his guardian preferred a claim petition under section 246 of Act VIII of 1859, might, after the expiration of one year from the date of dismissal, bring a regular suit by his guardian whilst the disability of infancy continues. It was held that sections 11 and 12 of Act XIV of 1859 do apply to the 246th section of Act VIII of 1859. *Phoolbas Koonwur v. Lalla Jogeshur Sahay.*⁽²⁾

Benefit of this section applies also to the period that disability continues.

A minor after one year from dismissal of claim petition by guardian might bring regular suit by guardian.

(c) In *Khodabux v. Budree Narain Singh*,⁽³⁾ a minor was dispossessed of his share in certain property which had been sold in execution of a decree. An application made by the then guardian of the minor under section 268 of Act VIII of 1859 to obtain possession of the share in September, 1877, was rejected in November 1877; subsequently, after one year from the date of the order, on the 22nd January, 1879, a suit was brought by another guardian of the infant duly appointed to obtain possession. It was held that such suit was not barred by limitation; the right to sue being that of the minor and that it might be exercised by any one duly appointed on his behalf during his minority, or by the infant himself within the time limited by this section after attaining majority. The Judges observe, that the law may be different as regards appeals, because a minor's rights are not specially excepted in this respect.

Suit by guardian being that of the minor is governed by limitation applicable to minor (1881).

As regards appeals a minor's rights are not specially excepted as in the case of suits.

(d) Following the principles of the above decision, the Bombay High Court in *Jagjivan Amirchand v. Hasan*

B. H. held provisions of this section to apply to execution of decree (1883).

(1) I. L. R., 8 Bom., 569. | (2) I. L. R., 1 Calc., 226.

(3) I. L. R., 7 Calc., 138.

Abraham,⁽¹⁾ in which a widow as guardian and administratrix of her minor sons obtained a money decree in August, 1874, and applied for execution in February, 1875, which was struck off in July, 1875, as no property of the debtor was found. She died on the 16th June, 1881. Following *Khodabux v. Budree Narain Singh*⁽²⁾ it was held that the application made by one of the sons in October, 1882, soon after attaining his majority, was not time-barred as the period of limitation began to run against the applicant from the date of his attaining majority.

M. H. also held so.

(e) In *Anantharama Ayyan v. Karuppanan*,⁽³⁾ a minor's grand-mother, as guardian, obtained a decree in April, 1873. In October, 1875, the minor's natural father, who was then his guardian, took certain steps in execution and died. The minor having attained his majority in 1878, applied for execution on the 29th November. The District Judge in appeal rejected the application as barred. It was held that the application was saved from limitation by the provisions of this section, and that although for a season the minor was represented by a guardian who made the first application on his behalf, this circumstance did not remove the disability of the minor.

C. H. also held so.

(f) In *Mon Mohun Buksee v. Gunga Soondery Dabée*,⁽⁴⁾ it was held that the application of the guardian is the application of the infant. The minor is under disability during the whole period of his minority. His disability does not cease, because he, through his guardian, makes two or more applications for execution, however long the interval between them, provided they are all made during his minority.

Creditor's application of September, 1882, to enforce decree of April, 1862, when he was minor, held not barred as he became major only in September, 1879.

(g) In *Jugmohun Mahto v. Luchmeshur Singh*,⁽⁵⁾ certain proceedings taken in execution of a decree dated April, 1862, terminated in September, 1866, when the execution case was struck off the file. Between that date and the 25th September, 1882, no further proceedings were

(1) I. L. R., 7 Bom., 179.

(2) I. L. R., 7 Calc., 137.

(3) I. L. R., 4 Mad., 119.

(4) I. L. R., 9 Calc. 181.

(5) I. L. R., 10 Calc., 748.

taken. On the latter date an application was made for execution. The decree-holder was a minor when the decree was passed and did not attain his majority till the 25th September, 1879. It was held, therefore, that as Act XIV of 1859 was applicable to the case previous to the date on which Act XV of 1877 came into operation, and as under section 11 the decree-holder was entitled to have the time during which he was a minor deducted from the period during which limitation was running against him, his right to execution was not barred when Act XV of 1877 came into force, and that being so, and the present application being made within 3 years of the date on which he attained his majority, execution of the decree was not barred.

(h) A minor who was entitled to certain lands was dispossessed during his minority. On attaining his majority he assigned his interest to the plaintiff, who brought a suit to recover possession within three years of the minor's coming of age, but more than 12 years after the dispossession. In another case, the minor's interest was sold in execution of a money decree against the minor, and the assignee; during the minor's minority, sued for possession within three years of the assignment. In both the cases it was held that the assignees cannot claim the exemptions accorded to the minor by this section, but is subject to the ordinary law of limitation. Garth, C. J., observes, "that the fact of the minor's representative in interest being expressly allowed by that section a certain time for bringing his suit, in those cases where the minor dies during the disability, seems clearly to indicate the intention of the legislature that in other cases the assignee of a minor is to have no special privilege." It was held that the provisions of the Act which relieve minors are purely personal exemptions, and must be considered as attaching to the person only, and not to the property or the title of those who are under disability. *Rudra Kant Surma Sircar v. Nobo Kishore Surma Biswas*.⁽¹⁾

Assignment of interest by a minor on attaining age or assignment of minor's interest by court sale does not entitle the assignee to the benefit of this section.

Provisions relieving minors are purely personal and do not attach to their property or title.

(1) I. L. R., 9 Calc., 663.

This section applies to a pre-emptor's suit to enforce pre-emption.

Disability of one joint creditor.

(i) In *Rajaram v. Bansi*,⁽¹⁾ it has been observed that the provisions of section 7 of Act IX of 1871 are applicable in computing the period of limitation in suits to enforce a right of pre-emption.

8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Illustrations.

(a).—A incurs a debt to a firm of which B, C and D are partners. B is insane and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b).—A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane or G attains majority.

A Hindu suing for money advanced during his minority by manager held not entitled to the benefit of this section, as there were adults who could give a discharge.

(a) In *Surju Prasad Singh v. Khwahish Ali*,⁽²⁾ during the plaintiff's minority the manager of the family lent money on behalf of the family to the defendant. The plaintiff after attaining his age and after three years from the date of the loan, sued for the money, relying upon the saving provisions of this section. It was held that during the period of three years from the date of the loan, as there were several adult members of the family who could give a discharge, the plaintiff was not entitled to the benefit of this section, and that the suit was barred.

Minor plaintiff's brother is not competent to give a discharge when loan bond stood in plaintiff's name.

(b) In *Yeknath Ramchandrar v. Waman Brahmdev*,⁽³⁾ the plaintiff having attained majority on the 11th March, 1882, sued the defendant within 3 years from that date upon a bond obtained in 1872 by his mother

(1) I. L. R., 1 All., 207. | 2) I. L. R., 4 All., 512.

(3) I. L. R., 10 Bom., 241.

and guardian in the plaintiff's name alone. The defendant contended that the plaintiff's brother, who was capable of giving a valid discharge to his debtors, having failed to sue within proper time, the suit was barred. On reference to the High Court, it was held that the suit was not barred. The plaintiff's brother not being a party to the bond, this section would not apply. The bond was passed to the plaintiff alone and the right of action accrued to him on the 8th July, 1873. Being then a minor, time did not begin to run until he attained his majority.

9. When once time has begun to run, no subsequent disability or inability to sue stops it :

Continuous running of time.

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

(a) In *Beake v. Davis*,⁽¹⁾ it was held that section 18 of the Limitation Act was in no way affected or qualified by this section, and that its scope and intention was to save creditors suing their debtors, after the accrual of the cause of action, the period during which such debtors have been absent from British India. In following this decision, Birdwood, J, in *Hanmantrám Sadhurám Pity v. Arthur Bowles*,⁽²⁾ observes that this section must be read with the immediate context, and having regard to the context, *viz.*, section 7, referring to certain legal disabilities of plaintiff, the inability referred to in this section must be held also to be a personal inability affecting the plaintiff himself and not to the circumstances of the person against whom he is entitled to institute a suit. This decision overruled the decision in *Narronji Bhimji v. Magnirum Chandaji*⁽³⁾ on the original side of the High

This section does not affect or qualify section 13.

Inability referred to in this section must be held to be personal inability affecting plaintiff himself.

(1) I. L. R., 4 All., 530.

(2) I. L. R., 8 Bom., 569.

(3) I. L. R., 6 Bom., 103.

Court, in which it had been held that the absence of the defendant after the accrual of the cause of action could not avail the plaintiff.

Minor suing on the cause of action accrued to his father can claim no deduction.

(b) In *Mohabat Ali v. Ali Mahomed*,⁽¹⁾ it was held that under section 11, Act XIV of 1859, the subsequent disability of an heir will not save a suit instituted after a lapse of twelve years from the date of cause of action, when such cause of action arose during the life-time of the ancestor. In *Virapillay v. Muruga*,⁽²⁾ plaintiff sued in 1864, six months after he attained his majority, on a loan bond held by his father, who died in July, 1882. The loan was re-payable in February, 1860. It was held that under Act XIV of 1859, section 11, the period of the plaintiff's legal disability by reason of minority cannot be deducted.

Courts being closed owing to rebellion does not stop limitation. (English case).

(c) "When the time has once begun to run it will continue to do so, even should subsequent events occur which render it an impossibility that an action should be brought. This rule holds good alike of all the statutes of limitation. So inviolable is this principle that it was decided in *Prideaux v. Webber*, (1 Lev., 31) that a plaintiff was barred by time, although during the latter part of the six years the courts were closed in consequence of the rebellion." (*Darby and Bosanquet*, p. 17.)

Presenting plaint to a Karkun in charge of Court during vacation will not prevent The Statute.

(d) In *Nandvallabh v. Allibhai Isyagani*,⁽³⁾ a plaint was presented to a karkun left in charge of a court during vacation, and the cause of action on which the suit was brought became barred before the vacation ended. It was held, that as the judge was the proper person to receive plaints, the presentation to the karkun was invalid, and did not prevent the period of limitation from running.

Presenting plaint to Munsiff in his private residence held insufficient (September, 1874).

(e) In *Jai Kuar v. Heera Lal*,⁽⁴⁾ it was held that the presentation of a plaint at the private residence of the Munsiff was not a sufficient institution of the suit, and that it must be held as instituted on the opening of the Court on the following day when the Munsiff passed an order directing the plaint to be registered.

(1) 3 B. L. R., App., 80.

(2) 2 Mad., H. C., 340.

(3) 6 Bom., H. C. A. C., 254.

(4) 7 N.-W. P. H. C., 5.

(f) In the Petition of Ganesh Sadashiv,⁽¹⁾ plaintiff presented a plaint to the District Court, the Munsiff's Court in which he ought to have presented it being then temporarily closed. It was held that the date on which the plaint was presented to the District Judge should be considered as the date of presentation to the proper court.

Presenting plaint to District Court instead of to Munsiff's Court which had been closed held sufficient.

(g) The proviso to this section refers to the case of a debtor obtaining letters of administration to his creditor's estate either before or after limitation has commenced to run and makes no mention of cases of a debtor becoming the executor of his creditor and a creditor becoming the executor of his debtor's estate.

The proviso does not extend to the case of a debtor becoming his creditor's executor and creditor becoming debtor's executor.

The grant of letters of administration, not being an act of the parties, operates as a *suspension* of the remedy. But where a creditor appoints his debtor an executor, and the latter accepts the executorship, this being an act of the parties, the debt is *extinguished* on the supposition of its being paid by the executor to himself, and thus becoming assets in his hands for which he is accountable. Section 87 of the Indian Trusts Act II of 1882, which does not extend to Bengal and Bombay, enacts "where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein." This is probably the reason why the proviso does not extend to the case of the debtor becoming *executor* to his creditor. In the case of a creditor becoming the executor of his debtor the creditor may pay himself out of the assets which he has to administer though the debt is barred.⁽²⁾ He cannot bring a suit for the purpose of making *himself* pay the debt.

Executor's right of retainer extends to debts barred by statute.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust* for any

Suits against express trustees and their representatives.

(1) 5 Bom., H. C. A. C., 117. | (2) Darby and Bosanquet, p 16.

* Definition of trust in Act II of 1882, section 3. "A trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the

specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property, shall be barred by any length of time.

The word "express" was not used in the Act of 1859.

(a) The word "express" occurring in the marginal note of this section and also in the corresponding section of Act IX of 1871, was not to be found in section 2 of Act XIV of 1859. In *Lallubhai v. Mankuvarbai*,⁽¹⁾ the question was whether resulting trust was such a trust as was contemplated by section 2 of Act XIV of 1859. The word "express" occurring in the English statute 3 and 4, Wm : IV c. 27, section 25 not being found in the above Indian Enactment, it was held that an executor, who by the will is made an express trustee for certain purposes is, as to the undisposed of residue, a trustee within the scope of section 2 of Act XIV of 1859, for the heir or heirs of the testator.

Under Act XIV of 1859, express trustee by will for a purpose was held trustee as to undisposed of residue.

Bittlestone, J., on the word "representative" in section 2 of Act XIV of 1859.

(b) In *H. H. Azim-u-nissa Begum v. Clement Dale*⁽²⁾ Bittlestone, J., observes, "in my opinion the word "representative" means the person who, as heir or executor,

(1) I. L. R., 2 Bom., 388. | (2) 6 Mad., H. C. R.

owner: the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee;" the person for whose benefit the confidence is accepted is called the beneficiary.

"Following trust property." Section 63 provides for the recovery of property originally intrusted to the trustee being found in the hands of a third person inconsistently with the trust or for the recovery of property or money which the trustee may have received for the trust property he has disposed of, provided it is capable of being traced in the hands of the trustee or his legal representative.

The words "good faith" occur in section 96. Section 96 of the Indian Trusts Act saves the rights of *bona fide* purchasers by providing that the rights of transferees in good faith for consideration shall not be affected or impaired. But the Act does not affect the rules of Mahomedan law as to *Waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private, religious or charitable endowments.

or administrator, represents the estate of a deceased trustee; and who has received, as such representative, the specific property which is the subject of the trust."

(c) The Privy Council in *Balwant Rao Bishwant Chandra Chor, v. Purun Mal Chanbi*,⁽¹⁾ has interpreted the expression "for the purpose of following in his or their hands such property." Their Lordships say that it means "for the purpose of recovering the property for the trusts in question: that when property is used for some purpose other than the proper purpose of the trusts in question, it may be recovered without any bar of time from the hands of the persons indicated in the section."

P. C. on the expression "for the purpose of following in his or their hands such property."

(d) The words "good faith" used in the explanation to section 10 of Act IX of 1871, and in Articles 133 and 134 of the second schedule of that Act have been omitted in the Act of 1877. This appears to have been made probably with reference to the observations of Green, J., in *Manik Lal Atmaram v. Manchershhi*,⁽²⁾ in which he has compared the "Indian Limitation" Act with statute III and IV, Wm. IV, c. 27, and remarked that the former, *viz.*, Act IX of 1871 was less liberal in the protection of a purchaser for value than the latter. For, under Act IX of 1871, a purchaser from a trustee or mortgagee claiming protection of the Limitation Act was required to show not only that he gave value, but that the purchase was *bona fide*, while under the English Limitation Act such purchaser was protected by the lapse of the statutory period of limitation, whether there was *bona fide* or not on the part of the purchaser. The Judge referring to *Peter v. Peter* (1. Drew, 371) observed, "I may add that, in my opinion, there is nothing in the Indian Limitation Act excluding from its benefit those asserting their right to claim under a *bona fide* purchase for value, by reason that those claiming against them are the objects of a *charitable* trust imposed on such property."

The words "good faith" used in Act IX of 1871, have been omitted in the Act of 1877.

Act IX of 1871 required a purchaser from trustee to prove that purchase was *bona fide*.

Lapse of time under the English Act protected him whether purchase was *bona fide* or not.

(e) "Every trustee must be a trustee for a specific purpose in the sense that a purpose can be indicated to which

Observations of Mark J., on "specific purpose" in Act IX of 1871.

(1) L. R., 10 Ind. Ap., 96. | (2) I. L. R., Bom., Vol. 1, 281.

Means purpose specified by the creator of the trust.

"Express" trust in the English Act includes implied and resulting trust but not constructive trust.

Section 10 of Act IX of 1871 was held not to apply to a trust not specified by testator.

Whether a suit by a trustee to disaffirm the completed act of a predecessor against the person claiming by virtue of such Act would lie.

Widow as executrix of the testator sold in 1862 property to defendant who knew of the trust.

the property held by the trustee must be applied by him. But I think the words "specific purpose" were intended as words of restriction, and the conclusion I have come to is, that by "specific purpose" must be meant as a purpose which has been specified by the person who created the trust. I am not prepared to say that the word "specific" in the Indian Act of Limitations corresponds exactly to the word "express" in the English Act. Express trusts include, besides direct trusts, implied trusts and resulting trusts, but not constructive trusts, using those words as defined by Mr. Lewin at p. 86 of the fifth edition in the notes. That language, and that classification of trusts, however, are scarcely applicable in a country where, by the word "trusts," we indicate relationships differing from that of trustee and *cestui que* trust under the English law, and where such relationships may be created by parol. It may, I think, well be, that the Indian legislature did not think it desirable, after a certain lapse of time, to enforce trusts which had to be gathered from the tenor of a conversation and had not been declared by any specific words. The trust which it is now sought to enforce had not been specified by the testator, and I therefore think that section 10 does not apply to this case, and that the ordinary rules of limitation must apply. *Kherodemoney Dossee v. Doorgamoney Dossee*."⁽¹⁾

(f) *Maniklal Atmaram v. Manchersh Dinsha Coachman*,⁽²⁾ was a suit brought by a trustee to annul the act of a former trustee, under which the defendant claimed to hold certain property as vendee. In this case, a Hindu, by a will, dated 1802, bequeathed a house to his wife for her life in trust, to allow the impersonations of *valabh* to reside in it, and appointed four executors, but made no gift over of the house to those executors or any one else. In June, 1820, the widow claiming as executrix obtained an order for probate to her as well as to the executors who retired, and the widow who was in sole management of the testator's estate sold the house in 1862 for its full

(1) I. L. R., 4 Calc., 471. | (2) I. L. R., 1 Bom., 269.

value to the defendant, who had notice of the trust. The widow died in 1870, and in 1871 the High Court, on the application of the plaintiff's father, granted him letters of administration revoking the probate to the widow, but without prejudice to any act done by her in the course of administration. The plaintiff's father died in 1873. In May, 1875, the plaintiff, as the only son and heir of his father, sued to recover possession of the property from the defendant. The plaintiff was also one of the surviving heirs of the testator, and became the sole surviving heir by virtue of a release given him by the other heirs. The plaintiff claimed the house to hold it for the purpose of giving effect to the trust created by the will. He obtained letters of administration in 1876, and based his claim thereon. It was held that the plaintiff had no ground of action as administrator of the testator; that as the trusteeship vested in all the surviving heirs, the release, though it would vest the legal estate in the plaintiff alone, could not vest the trusteeship in him exclusively; and that even if the other heirs had joined as plaintiffs, still the suit would not lie, as it is one by trustees to disaffirm the completed act of a predecessor against the person claiming by virtue of such act. Green, J., observes, "in whatever way the plaintiff's position is looked at, it comes to that of one, claiming to act as trustee under a will, seeking to undo an act of one who was also trustee under the same instrument. If Rajkuver had, in her life-time, filed a suit against the present defendant, saying, "true, I have conveyed this house to you (the defendant), and you have paid to me Rs. 13,000 as purchase money, and have since laid out as much again upon it; but the conveyance by me was a breach of trust, and you had the means of knowing that it was so, and you must, therefore, restore me the property and resign yourself to the loss of the purchase money and expenditure," I apprehend such a suit would not be listened to. A trustee, as between himself and one to whom he has conveyed trust-property, is, I apprehend, as much concluded by his own completed act as any

Plaintiff who had also become sole heir of testator by release given him by the other heirs sued as administrator vendee of deceased trustee for property in 1875 to give effect to trust.

It was held that he cannot sue as administrator.

Green J., observes; such suit is not maintainable in the form in which it has been laid.

Completed act of former trustee is conclusive against successor seeking to annul it, as against person claiming under such act.

There are cases of one trustee suing co-trustee for property or its value,

and of *cestui que* trust suing trustee and his vendee for property.

But no precedent found of a trustee seeking to disaffirm his predecessor's act against person claiming by such Act,

Alienation of charity property by trustee, standing by itself, is not a breach of trust.

other vendor. So, again, I apprehend, the completed act of a former trustee, though in itself a breach of trust, is as conclusive against a successor in the trusteeship, where it is the successor who, in a suit against one claiming under and by virtue of such act, is seeking to disaffirm and annul it. We find, no doubt, cases of one trustee who has been innocent of any breach of trust suing a co-trustee, or the representatives of a deceased trustee, to restore property disposed of by breach of trust, or its value. There are also many cases to be found of *cestui que* trust suing a trustee who has, in breach of his trust, disposed of property, and joining as defendant in such suit the party who has purchased the property with notice of the breach of trust. But in these cases the act sought to be annulled is not the act of the plaintiff or his predecessor in estate, and has no similarity to the case of a trustee seeking to disaffirm his own act, or that of a predecessor, as against the person claiming by virtue of such act. This difficulty in the plaintiff's way occurred to me early in the course of the hearing of the present case. The defendant's counsel, in stating the case of the defendant, maintained that no precedent could be found of a suit of the nature of the present one, and the plaintiff's counsel did not profess to have found any, though such precedent was called for early in the course of a hearing which lasted several days. Without saying anything as to the probable fate of this suit, had it been instituted by the Advocate-General on behalf of impersonations of *valabk* visiting, or who might visit Bombay, it cannot, in my opinion, be maintained in its present form."

(g) Green, J., observes, "there is no such principle of law that the alienation of charity property by the trustees is, standing by itself, a breach of trust. The Court of Chancery in many cases authorizes such alienations, and according to Lord Langdale's judgment, in *Attorney General v. South Sea Company* (4 Beav. 453, see p. 458), "that which the Court might have done upon its own consideration of what would have been beneficial to the

charity, might have been done by the trustees upon their own authority in the exercise of their legal powers." Looking at the circumstances of the present case, and having regard to the principles to be found in a number of decisions of English Courts of Equity, (of which I may mention, *Attorney-General v. Warner*, (2, Swanst, 291), *Attorney-General v. Pembroke Hall*, (2 Sim. and St. 441, S. C. I. R. & M. 751), *Attorney-General v. Hungerford*, (2 Cl. and Fim. 357) and *Attorney-General v. The South Sea Company*, (4 Beav., 453), I should have been inclined, had it been necessary in the present case distinctly to decide the question to uphold the sale by Rajkuver as being a proper and reasonable exercise of her office as trustee, and to have held it not to have been a breach of trust at all. But I say nothing as to the question whether her application of the proceeds to building or completing a temple and dharmasala at Gogo can be sustained. But, in my opinion, the proper person to institute any suit against the estate of Rajkuver, if any suit at all be maintainable, in respect of her application of the purchase money received from the defendant, would be the Advocate-General on behalf of the Maharajas, and not the present plaintiff." "It has been decided by the highest tribunal in England, in the case of the President and Scholars of the College of St. Mary Magadalen, Oxford v. The Attorney-General, (6 H. L., Ca. 189), that the purchasers for value of lands devoted to charity, namely, the poor of certain parishes, were entitled to rely on the English Statute of Limitations as a defence, though they purchased with notice of the charity,"

(h) A, by his last will and testament, gave his property to trustees, partly in trust for religious and other purposes, and partly to pay thereout to certain persons and their heirs for ever certain annuities, being fixed portions of the net profits of a certain estate called the Hurro Estate. A died in November, 1863. On the 11th of August, 1879, the heir of one of the annuitants instituted a suit claiming a share under the will, and asking for a partition of that share. The plaintiff alleged besides, that certain

On consideration of benefit to charity, trustee might sell trust property.

If necessary the judge in this case would hold sale by widow as executrix was not breach of trust.

Proper person to sue the estate of the widow in respect of her application of the sale proceeds is Advocate-General.

Vendee with notice of charity might rely upon limitation.

C. H. Testator's heirs might compel trustees to administer trust property though their suit for property undisposed of may be barred.

of the trusts and provisions in the will were invalid in law; that, consequently, a large portion of the testator's property remained undisposed of at his death, and she claimed a share of this residue as one of the heirs of the testator. It was held that, under the circumstances, the gift of the share of the rents and profits amounted to a gift of a share in the *corpus* of the estate; and that, in respect of that portion of the plaintiff's claim, the suit was not barred by limitation. It was further held that where an estate is given by will to trustees for religious and other purposes, some of which are invalid or fail, the heirs of the testator may be barred by limitation from recovering the portion undisposed of, though they might still bring a suit against the trustees to compel them to properly administer the trusts which had not failed. *Hemangini Dasi v. Nobin Chand Ghose*.⁽¹⁾

A. H.
To constitute trustee, it must appear from express words or facts, that owner entrusted property to discharge a particular obligation.

(i) In *Barkat v. Daulat*,⁽²⁾ plaintiffs, as heirs of certain co-sharers of a village who had abandoned their share for 60 years, sued the defendants for surrender of the shares on receipt of the Revenue paid by them. The defendant, when obtaining possession in 1838, on payment of Revenue due by plaintiffs' father, had attested a village paper agreeing to restore the land if the latter returned and paid him the Revenue. The village Administration Report of 1862 also stated that co-sharers might recover their shares on payment of arrears of Revenue. It was held that such documents did not prove any express trust, and that in order to make a person an express trustee within the meaning of this section, it must appear either from express words, or clearly from the facts that the rightful owner has entrusted the property to the person alleged to be a trustee for the discharge of a particular obligation.

A. H.
Case where constructive trust was held to exist and limitation held not to apply.

(j) In *Durga Prasad v. Asa Ram*,⁽³⁾ the defendant and his father were jointly entitled to a moiety of certain property, while his uncle and uncle's son were entitled to the other moiety. In 1840, the defendant and his father were

(1) I. L. R., 8 Calc., 788. | (2) I. L. R., 4 All., 187.

(3) I. L. R., 2 All., 362.

transported for life, and their wives who were alive at the time since died. The defendant's uncle's son mortgaged the entire shop on the 30th May, 1873, to the plaintiff, who, obtaining a decree for sale in November, 1876, purchased it in auction in April, 1879. The defendant, who had in the end of 1877 returned from transportation under a free pardon, having disputed the plaintiff's right, the plaintiff brought a suit in 1878 to recover possession; it was alleged by the defendant that he had transferred his moiety of the shop to his uncle in trust and that he continued payment of the income to his wife till her death, which occurred 9 or 10 years before the suit. The Lower Appellate Court rejected the suit on the ground that the defendant's right was extinguished. From the proceedings taken in 1867, the defendant's uncle appeared to have claimed the property, claiming to succeed the defendant's wife at her death, and the judgment in that case showed that the claim proceeded on the assumption that the defendant was dead. Straight, J., being of opinion that the case was such that required the court to exercise its powers of equitable interference to the fullest extent, held, that the court was justified in holding that a constructive trust existed in the defendant's uncle and his son, from the day the imprisonment of the defendant and his father commenced, and that no limitation could affect the rights of the defendant, and he was entirely justified in setting them up against the plaintiff's claim to the extent of his own interest. "A person may declare a trust either directly or indirectly: indirectly by evincing an intention which the court will effectuate through the medium of an implied trust." Lewin, 6th edition, p. 95. Again "constructive trusts are those which the court effects by a construction put on certain acts of parties." "No time will cover fraud so long as it remains concealed; for until discovery, or at all events until the fraud might with reasonable diligence have been discovered, the title to avoid the transaction does not properly arise." Lewin, 6th edition, p. 710.

The case was such that required the court's equitable interference to the fullest extent.

Held court was justified in holding that a constructive trust existed in this case.

A person may declare trust either directly or indirectly.

Constructive trusts are those which court effects from acts of parties.

M. H.
Claim to vindicate one's personal rights of a trustee to possession against another claiming right as such does not fall under this section.

(k) In *Karimshah v. Nattan*,⁽¹⁾ plaintiff, who was brother of the 1st defendant's deceased husband, sought to recover certain property granted for a charitable and religious institution, alleging that the 1st defendant had been in wrongful possession and that the other defendants held under her. The 2nd defendant claimed to be in possession as trustee under a will of the 1st defendant's husband for upwards of twelve years. The Lower Appellate Court rejected the suit as barred. A Division Bench, (Turner, C. J., and Muthusawmy, Aiyar J.), held that the case was governed by the decision of the Judicial Committee in *Balwant Rao Bishwant Chandra Chor v. Purn Mal Chaube*,⁽²⁾ in which it was held that a claim to vindicate the personal right of a trustee to the possession of immoveable property against another person claiming that right in the same character was not governed by section 10 of the Limitation Act.

No length of time bars suit for property against dismissed trustee.

(l) *Virasami v. Lubba*⁽³⁾ was a suit by the trustees of a temple to recover the property appertaining to it from an ex-trustee dismissed from the office by the temple committee. It was held under this section that no length of time would bar a suit and that this case was distinguishable from *Param Singh v. Lalji Mal*,⁽⁴⁾ in which the appellant was not a trustee in the sense of the Limitation Act, for, "trustee" by section 3 of that Act does not include a benamidar.

P. C.
Suit to fall within this section must be brought to recover trust property for the benefit of the trust.
(1883.)

(m) In *Balwant Rao v. Purn Mal*,⁽⁵⁾ plaintiff sued to be recognized as chief manager with power to dismiss and appoint a sub-manager and to obtain possession of the temple property by ejectment of the defendant, alleging that his ancestor founded the temple, and, dedicating the plaint property to it, entrusted the management of the service and worship to the defendant's grandfather, and that the mother of the defendant, who was a minor, refused to render an account of the income when de-

(1) I. L. R., 7 Mad., 417.

(2) I. L. R., 10 Ind. Ap., 90.

(3) I. L. R., 6 Mad., 54.

(4) I. L. R., 1 All., 403.

(5) I. L. R., 6 All., 1.

manded in 1865. Their Lordships of the Privy Council held that the plaintiff sued to enforce his own personal right to manage the endowment, that there being no question whether or not the property was being applied to the purposes of the endowment, section 10 of Act IX of 1871 was not applicable to the suit, that a suit, in order to fall within that section, must be brought for the purpose of recovering the trust property for the benefit of the trust, and that the section means that when trust property is used for some purpose other than that of the trust, it may be recovered without any bar of time from the hands of those in whom it has been vested in trust. It was further held that the suit might fall within Article 123, or 145 of Act IX of 1871, which was in force when the suit was brought, and had it fallen within neither of the above, it would be barred under Article 118.

May be recovered from those, in whom it has been vested in trust.

(N) In a suit brought by a divided son, who had obtained a decree against his father and brother for a third share of family estate and of a debt due to the family, to recover his share of the debt which the debtor paid after the decree to his father, who since died, it was held that the money received by the father was not held in trust for a specific purpose within the meaning of this section, but that the plaintiff's share received by the father was money received to plaintiff's use under Article 62. *Arunachalla v. Ramasami*.⁽¹⁾

Father, divided from son, receiving family debt does not act as trustee.

(O) In *Saroda Pershad Chatto Padhya v. Brojo Nauth Bhutta Charges*,⁽²⁾ plaintiff alleged that his father had, before his death, placed in the hands of defendant a certain sum of money, and had also transferred to him (defendant) his landed property upon trust, that he, (defendant) should, during the minority of plaintiff, hold the money and manage the property for the benefit of plaintiff and maintain him, and should, on the plaintiff's attaining his majority, make over to him the property and so much of the money as should then be unexpended, and that defendant had accepted the trust, but upon

C. H.
Suit by a cestui que trust against a trustee for an account does not fall under this section. (March 1880.)

(1) I. L. R., 6 Mad., 402. | (2) I. L. R., 5 Calc., 910.

Held such suit would be barred, if not brought within 6 years from plaintiff's majority.

To claim the benefit of this section, suit must be to follow trust-property in trustee's hands.

B. H.
This section does not apply to suit for an account against executor or his representative. (February 1896)

plaintiff's coming of age, had refused to render any account. Plaintiff accordingly brought a suit for an account. Defendant pleaded that plaintiff had attained his majority at a much earlier period than he alleged, and that the suit was barred by limitation. Plaintiff replied that under section 10 of Act XV of 1877, his suit could not be barred by any length of time. It was held that section 10 of Act XV of 1877 did not apply to such a case, and that plaintiff's suit would be barred if not brought within six years from the time when he attained his majority and became entitled to demand an account. In India, suits between a '*cestui que trust*' and trustee for an account are governed solely by the Limitation Act, (Act XV of 1877) and unless they fall within the exemption of section 10, they are liable to become barred by some one or other of the articles in the second schedule of the Act. To claim the benefit of section 10, a suit against a trustee must be for the purpose of following the trust property in his hands. If the object of the suit is not to recover any property *in specie*, but to have an account of the defendant's stewardship, which means an account of the moneys received and disbursed by the defendant on plaintiff's behalf, and to be paid any balance which may be found due to him upon taking the account, it must be brought within six years from the time when the plaintiff had first a right to demand it. Even in England the Judicature Act (36 and 37 Vict, C. 66, section 25, clause 2) enacts, that "no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitation."

(p) The Bombay High Court followed the above decision in Shapurji Nowroji Pochaji v. Bhikaiji.⁽¹⁾ In this case, testator died in 1865, leaving a will of which his nephews P and S were the executors. His will provided that after payment of all debts, &c., the residue of his property should remain in the hands of the executors,

(1) I. L. R., 10 Bom., 242.

who were "to maintain the family in the same manner as I used to maintain the family in my house." After the death of both the executors, the residue was to be apportioned among the children of his nephews in equal shares. On the death of the testator, *P* took possession of the estate, and died on the 10th January, 1876. *S* remained passive until the 27th August, 1884, when he took out probate of the testator's will. On the 23rd January, 1885, he filed the present suit against the defendant as widow and administratrix of *P*, praying for an account of the estate of the testator that had come to the hands of *P*, and also for an account of the estate of *P*. The plaintiff contended that the testator's estate came into the hands of *P* as a trustee, that the suit was to recover the property for the purposes of the trust, and that section 10 of the Limitation Act (XV of 1877) applied. The defendant alleged that all the moneys belonging to the testator's estate, which had come into the hands of *P*, had been expended in paying the testator's debts, and that there was no residue left for the purposes of the trusts of the will, and she contended that the suit was barred by limitation. It was held that the suit was barred by Article 120 of schedule II of the Limitation Act XV of 1877, being primarily not a suit to follow trust property in the hands of a representative of a trustee, but really to ascertain whether any trust remained to be administered after the testator's debts and funeral expenses have been paid. No breach of trust was alleged. The suit was merely for an account against the executor or his representative. To such a suit this section of the act does not apply.

Held that the suit was barred by article 120, it being really one to ascertain whether any trust remained to be administered after payment of debts, &c.

(q) In *Hurro Coomaree Dossee v. Taini Churn By-sack*,⁽¹⁾ a certain lady left a will of which she appointed one *A*, since deceased, sole executor, and directed by the will that the income of certain houses should be applied towards the performance of the worship of an idol, and that the balance should be divided between certain persons named

But suit to charge property with trust as per will and for an account, was held to fall under this section. (April 1882.)

(1) I. L. R., 8 Cal., 766.

in the will. The executor left a will, of which he had appointed two executors who acted in the trusts of the will. After certain litigations, the defendants in this case were declared as fit and proper persons to perform the trust. The plaintiffs in this case charged the defendants with various breaches of trust and for an account. It was held that a suit against trustees for the purpose of charging certain property with the trusts declared by the author of the trust in respect of that property and for an account, is a suit to follow property, and as such is not barred by any lapse of time.

A testator giving particular property to pay a particular debt, creates a trust.

(r) In *Anund Moye Dabi v. Grish Chunder Myti*,⁽¹⁾ 1st defendant was a minor and his father was 2nd defendant. The 1st defendant's maternal uncle borrowed from the 2nd defendant Rs. 15,000; and in May, 1868, executed a will in favour of the infant defendant, bequeathing to him his properties and directing him to pay off the 2nd defendant's debt out of the properties for which he (the testator) had obtained a decree against a third party. The decree was then in the Privy Council in appeal. After it was disposed of, the 2nd defendant, as guardian of his son, executed the decree and obtained possession of all the properties included in it, and realized a certain sum of money. Subsequently the plaintiff's husband obtained a decree against the 2nd defendant and caused *his right to receive his debts* to be sold in execution and purchased it himself in September, 1875. This suit for money was not instituted until more than 3 years after that date. The defendants pleaded limitation, and the Lower Court rejected it on that ground. It was held that a charge of debts generally by a testator upon his property or any part of it will not affect limitation, because it does not at all vary the legal liabilities of the parties, or make any difference with respect to the effect and operation of the statute itself. The executors take the estate subject to the claim of the creditors, and are in point of law trustees for the creditors, and such a charge

Charge of debts generally by a testator on his property, will not affect limitation.

(1) I. L. R., 7 Calc., 772.

adds nothing to their legal liabilities. But the case is different when particular property is given upon trust to pay a particular debt or debts. In such a case the trustee has a new duty, not the ordinary duty of an executor to pay debts generally out of property generally, but a duty to apply a particular property to secure a particular debt; and there is a trust within the meaning of this section.

But when he charges particular property with a particular debt it imposes a new duty on trustee.

(s) *Greender Chunder Ghose v. Mackintosh*⁽¹⁾ was brought in November, 1876, by creditors of the estate of A on behalf of themselves and all the other creditors of the estate against the executor of the will of A and also against the mortgagee who had obtained the mortgage from the executors in 1863. The object of the suit was to follow in the hands of the mortgagee the property mortgaged. It was contended that if the property in the hands of the mortgagee is in fact chargeable with the payment of debts, it has then become vested in him for the specific purpose of paying those debts. Following the decision in *Kherode Money Dossee v. Doorgamoney Dossee*,⁽²⁾ it was held that the suit was not governed by this section, and that the words "in trust for a specific purpose" are intended to apply to trusts created for some defined or particular purpose or object as distinguished from trusts of a general nature, such as the law imposes upon executors and others who hold recognized fiduciary positions. It was further held that the suit was barred by article 118 of Act IX of 1871, corresponding to Article 120 of Act XV of 1877. This case was distinguished from *Lallubhai Bapubhai v. Mankuvar Bai*,⁽³⁾ which was decided under section 2 of Act XIV of 1859, which would appear to apply to all trustees, and which contains no words restricting the scope of the section to trusts for a specific purpose.

H.
This section does not apply to trust of a general nature, such as the law imposes on executors and others holding fiduciary position.

(t) In *Thackersey Dewraj v. Hurbhum Nursey*,⁽⁴⁾ plaintiffs, who were members of a caste and worshippers at caste temple, sought to make the defendants, who were

Suit to make defendant liable for money lost to caste and temple through defendant's misconduct fell under this sec.

(1) I. L. R., 4 Cal., 897.

(2) I. L. R., 4 Cal., 455.

(3) I. L. R., 2 Bom., 388.

(4) I. L. R., 8 Bom., 432.

trustees liable in respect of the moneys lost to the caste and temple funds, by their misconduct and improper dealing with them, and prayed for the appointment of new trustees and for the settlement of a scheme. It was held that under the provisions of this section the defendant's liability for losses from 1867 was not barred, inasmuch as the money could be traced to the hands of the trustees, and the losses were caused by their misconduct and improper dealing with it.

Possession of plaintiff's land by the Peshwa's Government, by attachments from 1806 and British Government from 1866 to 1870, was held as possession by constructive trustees in a suit by plaintiff, to eject tenant after restoration.

(u) In *Tukaram v. Sujangir Guru*,⁽¹⁾ the Peshwa's Government attached certain vatan lands of the plaintiff's family, in 1806-1807, and the British Government which succeeded it resumed them or made them khalsa in 1866. The defendant in the meantime entered upon the land as tenant to the Government, and paid assessment thereon. The plaintiff obtaining an order for the restoration of the lands in 1871, brought a suit against their coparceners for partition and obtained a decree. The defendant having obstructed the execution of the decree, the plaintiff sued in 1881 to eject him. The Lower Court held that the plaintiffs were entitled merely to such assessment as might remain after payment of judi to Government, and that the defendant's possession had become adverse, as the suit was not brought within 12 years from the resumption by Government in 1866. The Lower Appellate Court rejected the suit as barred. It was held that after attaching the lands, the Peshwa's Government held the same as constructive trustees for the plaintiff, and the same relation continued when the British Government succeeded it. The British Government, having succeeded to the trust continued to hold as trustee for the family of the plaintiff; their possession, therefore, could not be made adverse by limitation, or notice to the plaintiff. It was not found that the defendant held the lands before the attachment by the Peshwas. The plaintiff's right, having never been extinguished, had the same legal force in 1870, when the lands were restored, as it had before attach-

(1) I. L. R., 8 Bom., 585.

ment in 1806, and as the suit was brought within the term computed from 1871, it was not barred, the inability of the plaintiffs to sue before 1871 falling within the purview of the maxim "*contra non valentem agere non currit præscriptio*."

(v) In *Merwanji Hormusji v. Rustomji Burjorji*,⁽¹⁾ plaintiff, as representative of his deceased father, who was a partner with the 1st defendant, sued on the 16th of July, 1880, for a moiety of the amount realized by the 1st defendant by selling to the 2nd defendant a claim which the 1st defendant's firm had against another company. The firm of the 1st defendant and the plaintiff's father ceased to do business at the end of 1862, but no formal dissolution of the partnership took place. In 1869, the 1st defendant in his own name and that of the plaintiff's father, filed a suit against the company indebted to them, and in March, 1870, a commissioner was appointed to take account. In December, 1872, plaintiff's father died, and in February, 1873, the 1st defendant assigned for 17,000 rupees, the claim of his firm to the 2nd defendant, who paid to the 1st defendant in January, 1878, rupees 1,000 and in September, 1879, rupees 6,000, and at the hearing of this suit paid into court 10,000 rupees, for which he had executed a promissory note. It was held that the plaintiff was entitled to recover if the suit was brought within the period of limitation prescribed therefor, although right to bring a suit to take partnership accounts generally would have been barred. Latham, J., in his judgment, observes, "it is admitted by Mr. Starling that his client cannot claim the benefit of section 10 of the Limitation Act XV of 1877, and I think that the admission is clearly right."

A deceased partner's heir's suit for a share of a specific asset recovered by the surviving partner, does not fall under this section.

But it was held plaintiff could recover if he sued within time though his right to sue for partnership accounts would have been barred.

(w) In *Manickavelu Mudali v. Arbuthnot and Co.*,⁽²⁾ plaintiffs, as representatives of the original creditor, claimed to participate in the dividends set apart for creditors in 1840, on the ground that they were not claimed by those creditors and were in the hands of the

(Semble) Resulting trust not expressly declared, does not fall under this section.

(1) I. L. R., 6 Bom. 638. | (2) I. L. R., 4 Mad., 404.

Plaintiff sued to participate in the unclaimed dividends set apart for other creditors who might call upon trustees at any time for payment.

Such creditors not being parties to this suit, defendants can get no relief as against them by an account.

Such unpaid dividends vested in the defendants for the specific purpose of paying those creditors only, and not for the specific purpose of the general estate.

Words "you should give my brothers, their wives and children, according to your wishes" do not create a trust. There is nothing to shew what would have been sufficient compliance with the direction.

defendants, though their suit originally was to have the net balance due to the estate of the deceased debtor, ascertained and administered under the court's direction. The defendants pleaded that all the available assets were divided among the creditors up to 1840, and that they had in their hands only monies belonging and payable to the other creditors of the estate, and that their firm did not take upon themselves the burden of the trusts, but were employed upon the usual agency commission terms to close the affairs of the trust. Kernan, J., observes, "I am inclined to think that the trustees, who are only constructive trustees by virtue of having possession of the trust funds and of having acted in trust, and who are not representatives of the original trustees, are not persons in whom the property is vested for a specific purpose under section 10, Limitation Act 1877, inasmuch as the trust now sought to be established and administered is a resulting trust not expressly declared. The specific purpose was to pay dividends to all the creditors then. No specific purpose to re-distribute was declared. But the defendants received no general funds: they only received dividends set apart for particular creditors, and those dividends are vested in them for the specific purpose of paying those creditors only, and not for the specific purpose of the general estate. However, it is not necessary to decide the question of Limitation."

(X) In *Kumarasami v. Subbaraya*,⁽¹⁾ plaintiffs are two of the brothers of one deceased Krishna Moodelly, who died in September, 1882. The deceased, by a will, made several bequests and gave several directions as to his property, but there was no bequest to the executors who took no benefit under the will. The executors having renounced their office by a deed in March, 1883, administration with the will annexed was, with the plaintiff's consent, granted to defendant No. 1 in British Burmah. There was a clause in the will to the following effect: "you should give my brothers, Kumarasami Mudaliar,

(1) 1 L R., 9 Mad., 325.

Subbaroya Mudaliar, and Vyapuri Mudaliar, their wives and (sons) children, according to your wishes. You should defray the expenses of the marriages of Ramasawmi Mudaliar's four daughters; you should pay for the education, &c., of the aforesaid persons, (two) sons, what may be required." The plaintiff sued to have the trusts of the will carried out. Kernan, J, on the original side of the High Court declared that the said three brothers, their wives and sons were entitled to the residue of the estate, and ordered that it be divided into three shares. On appeal, a Division Bench, Brandt and Parker, J. J., held that no trust was created by the words "you should give my brothers, their wives and children, according to your wishes." Parker J, observes, "a trust is not created unless the words are imperative and the subject and objects are certain; *Knight v. Knight*. (3 Beav., 148.) Even had the estate been bequeathed to the executors and vested in them on probate, it seems very doubtful whether these words could have been construed as creating a trust for the benefit of the three brothers of the testator and their families over the whole of the residue of the estate. *Mussoorie Bank v. Raynor*. (I. L. R., 4 All., 500). If the words communicate a mere discretion no trust will arise (Lewin, 7 ed., ch : VIII, S. 2 (7) and notes), and in this case there is nothing whatever to show what would have been a sufficient compliance with the direction."

A trust is not created unless the words are imperative and the subject and objects are certain.

No trust will arise if the words communicate a mere discretion.

(y) In *Viziarama Razu v. The Secretary of State for India in Council*,⁽¹⁾ plaintiff sued the Secretary of State for possession of a Zamindari and also for an account of the rents and profits from September, 1828. The plaintiff's father died in 1828, leaving Kurmarazu, Viziaramarazu, and Niladri Narendra, his three sons. In consequence of the reports of the Collector made in 1828, and again in 1829, Kurmarazu was recognized as heir, the Court of Wards in the same year having taken charge of the estate. Kurmarazu having come of age in 1832, was put into possession. Disturbances then occurring in the

Government taking possession of an estate under a claim of forfeiture from a Zamindar who had possession from the Court of Wards, is not a trustee for a specific purpose.

(1) I. L. R., 8 Mv1, 525.

villages, amounting to rebellion, Martial law was proclaimed under the provisions of Regulation VII of 1808. Kurmarazu having been tried by court-martial, was found guilty of complicity in the rebellion, and sentenced to death, which sentence was commuted to one of imprisonment. The Zamindari of Palkonda was, under the same regulation, declared to be forfeited to the Government, which took possession of it, making proclamation to that effect in 1835. Kurmarazu had died a State prisoner in 1834. Niladri died many years before these proceedings. It was contended that the Government, who came into possession under a claim of forfeiture from Kurmarazu, who had been let into possession by the Court of Wards, are a person in whom the property had become vested in trust for a specific purpose, and that this suit was brought for the purpose of following that property. It was held that the Government was not placed in the position of a person in whom property had become vested for a specific purpose, and that the above section was not applicable to prevent the operation of the law of limitation under Act XV of 1877, which barred the suit brought by another of the sons, alleging title to the Zamindari.

Purchaser of property in the name of idol, when not dedicated to the idol, is not a trustee and the property is not trust-property.

(E) In *Maharanee Brojsoondery Debia v. Ranee Luchmee Koonwaree*,⁽¹⁾ the plaintiff sued as the Sebait of a certain idol to recover possession of a Zamindari by setting aside an alienation thereof effected by his grandmother, on the ground that it was debutter property dedicated to the idol, and consequently inalienable. It appeared that the property in dispute was purchased by the grandfather of the plaintiff in the name of the idol, which was set up merely for his private worship in his own house without any priest to perform regularly any religious service for the public benefit of Hindus, and that the property had been dealt with all along as his own private property. It was held that it was a mere nominal endowment and consequently the alienation thereof was not invalid. It was further held that a pro-

(1) 15 B. L. R., 176.

perty purchased by a man in the name of his own idol, which no one except himself has the power or right to worship, is not the property of the idol, but the property of the person who purchased it. The suit was dismissed as barred by limitation. In this case the Lords of the Privy Council have referred to the case of *Mahatab Chand v. Mirdad Ali*, in which it was held that, when an endowment is merely nominal, and indications of personal appropriation and exercise of proprietary right are found, a sale of the property is valid under the Hindu law. They also allude to the case of *Gosain v. Gosain*,⁽¹⁾ in which it was held that if a Hindu purchase property in the name of his son, the property is not vested in the son, but in the father who purchased.

Property purchased by a person in the name of his own idol which no others have right to worship is his property and not the idola.

(2-a) In *Maharanee Shibessouree Debia v. Mothooranath Acharjo*,⁽²⁾ it was held by the Privy Council, in December, 1869, that lands which were dedicated for religious services of an idol and managed by a *Sebait* of the endowment, cannot be alienated by the *Sebait*, but the *Sebait* can create derivative tenures and estates conformable to usage. *Phear, J.*, in *Syud Shah Alleh Ahmed v. Mussamut Pibee*,⁽³⁾ observes that this decision "merely affirms a doctrine which has always been held in this court, that an idol itself under Hindu law is a person capable of holding and enjoying property, and that the *Sebait* is merely the manager for the time being of that property, and not the proprietor."

Sebait of a Hindu idol was held not a trustee of the property.

(2-b) In *Syud Shah Alleh Ahmed v. Mussamut Pibee*,⁽⁴⁾ it was held that where property is vested in a person partly for charitable purposes and partly for the benefit of others, and he is bound to use it for such purposes and not for his own advantage, he is a trustee within the meaning of Act XIV of 1859, section 2. *Phear, J.*, observes "it would seem that the defendant has necessarily some property in the subject of suit which is dedicated first to certain charitable purposes, and then the remainder is to

Idol itself is capable of holding and enjoying property.

Person in whom property vests partly for charity and partly for other's benefit was held trustee under Act XIV of 1859.

(1) 6 Moor I. A., 53.

(2) 13 Moor., 270.

(3) 21 W. R., 415.

(4) 21 W. R., 415.

go to the plaintiff and other persons. There is no other person in whom the property can reside unless it be the defendant; and he is bound to use such property as he has in it, not for his own advantage, but for the purposes of carrying out the trusts of the deed under which he took it." "The plaintiff is entitled to call upon the defendant as a trustee for an account; and as it does not appear that any accounts have been settled between the trustee and the plaintiff, or any predecessor of the plaintiff, the account must be taken from the period mentioned in the plaint."

A suit against the representative of a trustee to make good the loss out of the general estate, does not fall under this section. See Article 98 which allows 3 years to such suits from trustee's death or date of loss.

(2-c) Bittlestone, J., observes "it is very reasonable that no lapse of time should be allowed to bar a suit against a trustee who has committed a breach of trust; and even after his death if the property which is the subject of the trust has passed into the hands of his representatives as part of his estate, it is equally reasonable that the *cestui que trust* should, after any lapse of time, be permitted to recover from the hands of the representatives that specific property. That if the property has been sold by the trustee in his lifetime, or has in any way disappeared and can no longer be traced, and the suit is brought against the representatives to make good the loss out of the general estate, the legislature has thought the same reason no longer applicable and has provided that in such case the proper period of limitation according to the preceding section should be computed from the death of the trustee." *H. H. Azim-u-nissa Begum v. Clement Dale*.⁽¹⁾

A. H.
A village administration-paper providing for surrender, to absent share-holders on their return, of lands formerly held by them, does not constitute valid trust as against actual occupiers.

(2-d) *Harbhag v. Guman*⁽²⁾ was a suit for possession of certain property said to have belonged to the plaintiff's ancestors, who had left the village some 30 years before the suit. The plaintiff relied upon a clause of the village administration-paper, dated January, 1869, which provided for the surrender to absent share-holders on their return to the village, of the lands formerly held by them, but did not contain any declaration of trust as existing between such absent share-holders and the occupiers of

(1) 6 Mad., H. C. R., 455. | (2) I. L. R., 2 All., 493.

their lands at the time when such administration-paper was framed. It was held that the administration-paper could not be regarded as evidence of a pre-existing trust between such persons, nor as an admission of such a trust by such occupiers. The declaration is general that any absconding parties returning to and settling in the village, shall immediately be put in possession, and the occupant shall not object to relinquish their holdings. It was held that the paper does not necessarily constitute a valid trust in favour of the absent share-holders although it may be evidence of such a trust.

(2-e) In *Piarey Lal v. Saliga*,⁽¹⁾ certain persons who had absconded from the village before *wajib-ul-arz* was framed, sued to enforce its clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to such *wajib-ul-arz* (village administration-paper), alleging that their property had vested in such a co-sharer in trust for them. It was held, that before such co-sharer could be taken to have held their property as a trustee, there must be evidence that he accepted such trust, and this fact could not be taken as proved by the *wajib-ul-arz*. It was further held that assuming the trust to be established, as the purchaser had purchased in good faith for value and without notice of the trust, and was not the representative of such co-sharer within the meaning of section 10, Act IX of 1871, and had been more than 12 years in possession, the suit was barred by limitation.

(2-f) In 1840, the purchasers and recorded proprietors of a four *biswas* share of a certain village caused a statement to be recorded in the village record-of-rights, to the effect that *B* claimed to be the proprietor of a moiety of such share, and that they were willing to admit his right whenever he paid them a moiety of the sum which they had paid in respect of the arrears of revenue due on such share. In 1843, *M* purchased such share and became its recorded proprietor. In 1877, *K*, the son

In a suit against purchaser from a co-sharer who took possession of the property on the plaintiff's ancestor's absconding, it was held, that before such co-sharer could be taken to have held as trustee there must be evidence that he accepted such trust.

Even if trust was established purchaser not being representative of such co-sharer was held protected by the statute of limitations.

Statement in the village-record-of-rights that purchaser of four shares was willing to release two shares if plaintiff's father who claimed them as his paid a moiety of the arrears of revenue due thereon held, would not show that shares vested in the purchaser

(1) I. L. R., 2 All., 394.

in trust to surrender it to plaintiff's father or his heirs.

of *B*, sued the representative of *M* for possession of a moiety of such share, alleging, with reference to the statement recorded in the record-of-rights, that such moiety had vested in *M*'s assignors in trust to surrender it to *B* or his heirs on payment of a moiety of the sum they had paid on account of revenue, and paying into court a moiety of such sum. It was held that that statement could not be regarded as evidence of the alleged trust, and that, assuming that the alleged trust existed, the suit was barred by limitation, *M* having purchased without notice of the trust and for valuable consideration. *Kamal Singh v. Batúl Fatima*.⁽¹⁾

However, suit against purchaser was held barred.

The terms *wajib-ul-arz* were held to strongly suggest the creation of such a trust that the absentees from the village contended for, and the court remanded the suit to ascertain whether the property was held in trust on agreement to return it when claimed.

(2-g) In *Sirdar Sainey v. Piran Singh*,⁽²⁾ *S* and his brother owned an eight annas share of a village, and *H* and *D* owned the other eight annas share: the parties being related to each other by blood. In 1865, (Sambat 1921) at the settlement of the village, the following statement was recorded by the Settlement officer in the *wajib-ul-arz* at the instance of *H* and *D*, with whom the settlement was made, *S* and his brother being absent from the village and having been absent for some 10 years: "We, *H* and *D* are equal sharers of one-eight annas, and *S* and (his brother) of the other eight annas in the village according to descent. Ten years ago, *S* and (his brother) went away into Orai; their present residence is not known; they have not left woman, child, or heir of any kind in the village: on that account the entire sixteen annas of the village are in possession of us, *H* and *D*. At the time of the preparation of the *khawat*, we made a gift of four annas of our own eight annas to *P*, and have given him possession of four annas of the eight annas belonging to *S* and (his brother), keeping the remaining four annas in our own possession: when *S* and (his brother) returned to the village, we three who are in possession shall give up the eight annas share of the aforesaid persons." In March, 1880, *S* sued *P* for possession of the four annas mentioned in the *wajib-ul-arz*, as having been made over to him by

(1) I. L. R., 2 All, 460. | (2) I. L. R., 3 All., 458.

H and *D* out of the eight annas share belonging to *S* and (his brother). He based his suit upon the *wajib-ul-arz*, but did not expressly state that the share in suit had been intrusted to *H* and *D* on the understanding that it should be returned to him when he reclaimed it. The Lower Appellate Court dismissed the suit as barred by limitation, on the ground that *P*'s possession of the share in suit became adverse in 1866 or 1867, more than 12 years before the institution of the suit, when *S*, having returned to the village, had claimed the share and *P* had refused to surrender it. On second appeal, it was contended by *S*, that under the terms of the *wajib-ul-arz*, *P*'s possession was that of a trustee, and his possession could not be held to be adverse. Spankie, J., was of opinion that the suit was barred by limitation, inasmuch as such a trust that the plaintiffs contended for could not be implied from the terms of the *wajib-ul-arz*. Pearson, J., was of opinion that although no mention was made in the *wajib-ul-arz* of such a trust as was contended for, yet the terms of that document strongly suggested the creation of such a trust. Having regard to the terms of the *wajib-ul-arz* and to the fact that *S* and (his brother) were not strangers to *H* and *D*, nor merely co-sharers, but mere blood relation, probably residing together on the same premises and partners in agricultural labors, further inquiry should be made with the view of elucidating the nature of the acquisition of *H* and *D* of the share and of their subsequent possession.

(2-h) In 1860, certain shares in a company then formed, were allotted to *S*, on the understanding, as the plaintiffs alleged, that one hundred and twenty of such shares should, on the amount thereof being paid to *S*, be transferred to and registered in the books of the company in the names of the plaintiffs. In 1862, the plaintiffs completed the payment to *S* in respect of the shares, and during his lifetime received dividends in respect of the said shares. *S* died in 1870, leaving a will, probate of which was granted to the defendant as his executor. In a suit brought by the plaintiffs after demand of the shares from the defendant and refusal by him to deliver

A person having allowed allotment to him of certain shares in a company agreeing to transfer them to plaintiff on payment for them, and having after payment paid plaintiffs dividends on the shares, would not amount to "a trust for any specific purpose."

Plaintiff might claim specific performance of the agreement.

them, to compel the defendant to transfer the shares to the plaintiffs and register the same in their names, the plaintiffs' case was, that the shares had been held in trust for them, and that, consequently, their suit was not barred by lapse of time. Held, that the transaction between *S* and the plaintiffs did not amount to "a trust for any specific purpose" within the meaning of section 10 of the Limitation Act, or to a trust at all, but to an agreement of which the plaintiffs were entitled to specific performance, and the limitation applicable was that provided by clause 113 of schedule 2, Act IX of 1871, and therefore the suit was not barred. Nor were the plaintiffs disentitled to relief by reason of any laches or delay in bringing the suit. *Ahmed Mahomed Pattel v. Adjein Dooply*.⁽¹⁾

Suit against servant for balance of money advanced for erecting buildings, &c., for plaintiff held not affected by limitation.

(2-i) In *Narayan Das v. Maharaja of Burdwan*,⁽²⁾ plaintiff advanced certain sums of money on different occasions to his servant *B*, for the purpose of erecting buildings, &c., for the plaintiff. When the plaintiff claimed the balance, the servant pleaded that the suit so far as it related to sums advanced to him more than three years before the suit, was barred. It was held under Act XIV of 1859, that the matter was of the nature of a trust, and limitation would not apply. Where an agent was intrusted with funds for the purpose of being employed in a particular manner in purchase of land or stock, it was held that there was an express trust to which the Statute of Limitation did not apply. *Burdick v. Garrick*.⁽³⁾

Entrusting agent with funds to be employed in a particular manner creates express trust.

Limitation cannot be pleaded against a member of a fund advancing claim on the fund.

(2-j) A fund was established at *Bombay* by the Convenanted Civil Servants of the *East India Company* serving in that Presidency, for granting pensions and annuities to members, their widows and children. By the original articles certain persons were appointed managers, and they were declared to be "the Trustees of the fund," and the property was vested in them. It was held, that they were not mere trustees for the association, but "trustees"

(1) 1. L. R., 2 Cal., 323. | (2) 1 B. L. R., S. N., 11.

(3) L. R., 5. Ch., 233.

properly so called, and that the members of the fund were the beneficiaries, so that the defence of the Statute of Limitations could not be set up against a claimant on the fund merely on account of lapse of time.⁽¹⁾

(2-k) In *Hodgson v. Williamson*,⁽²⁾ it was held that monies advanced by a stranger in providing necessaries for the support of a married woman living separate from her husband are debts binding her separate estate; and, being debts payable out of funds held in trust for her separate use, are not barred by the Statute of Limitations. Bacon, V. C., observes, "now, the only manner in which a married woman can contract is by charging her separate estate, and the remedy of the creditor is not at law, but in equity against the trustee of her separate estate; and, unless I depart from plain and well-established principles, I must hold that a charge was created on her separate estate for the re-payment of the money expended; in providing her with necessaries—absolute necessaries—and that the Statute of Limitations does not apply and cannot now be pleaded."

Money advanced for the support of a married woman being debt payable out of funds held in trust for her separate use is not barred.

(2-l) In *Burdick v. Garrick*,⁽³⁾ Lord Hatherley says, "it would indeed be a strange thing if this court should be obliged to hold that if a person, for instance, were to deposit plate or jewels with his bankers, intending to be absent from home for a greater number of years, and those chattels were converted by his bankers to their own use in fraud of the owner, and the owner were to come back after the end of seven or eight years, he is utterly remediless, either in the shape of an action at law or of a suit in this court, because the dealing with his property has been in the nature of an agency. I apprehend that the true rule applicable to these cases is to be found in the case of *Foley v. Hill* (2 H. L. C. 28-35), where it is clearly stated by Lord Cottenham, who distinguishes between the confidence reposed in a factor or agent, and the confidence reposed in a person

Lord Hatherley's judgment shews they may be an express trust without any actual expression in words when property or money is deposited for depositor's benefit.

Reason why a banker is not a trustee while a factor or agent is a trustee.

(1) 1 App. Cas., 281 | (2) L. R. Ch. D. 15, p. 87.

(3) L. R. Ch. D. 5 p, p. 233, 239.

A banker is not in any fiduciary relation to customer as to the particular coins or notes deposited.

who is merely in the position of banker. A mere banker who takes charge of his customer's money is not in any fiduciary relation whatever to him with respect to the particular coins or notes deposited, because it is the ordinary course of trade to make use of them for his own profit. He does make use of them and he invests the money deposited with him; and his customer does not require from him those very coins or exchequer bills which he deposited with him. But in the present case we have an agent who is intrusted with those funds, not for the purpose of being remitted when received to the principal, but for the purpose of being employed in a particular manner in the purchase of land or stock, and which monies the factor or agent is bound to keep totally distinct and separate from his own money; and in no way whatever to deal with or make use of them. How a person who is intrusted with funds under such circumstances differs from one in an ordinary fiduciary position I am unable to see. That being so, the Statute of Limitation, appears to me to have no application to the case."

An agent entrusted with money to be employed in a particular manner, is required to keep it separate and distinct from his own money.

First mortgagee selling mortgaged property with the sanction of 2nd mortgagee, is accountable for the surplus as trustee.

(2-m) In *Tanner v. Heard*,⁽¹⁾ the first mortgagee of a ship, with the sanction and authority of the second mortgagee, sold it, and received the sale proceeds, which exceeded the amount due to him. It was held, that the first mortgagee was accountable to the second mortgagee in the character of trustee. Master of the Rolls, observes, "I am of opinion that this is not a case in which the principles which obtain in a suit between mortgagees are applicable; I think it distinguishable. It is a case of this description: The defendant was first mortgagee of a ship; the plaintiff was the second. The defendant with the sanction and authority of the plaintiff, sold it at Amsterdam, and received the proceeds of the sale. Being entitled, in the first place, to the amount due on his mortgage and the expenses of the sale of the ship, and there being a surplus, he was bound to account to the plaintiff in the character of trustee.

(1) 23 Beav., 555.

(2-n) In *Banner v. Berridge*,⁽¹⁾ the second mortgagee of a ship claimed an account against the first mortgagee who had sold the vessel upon the mortgagor becoming bankrupt. Defendant offered to pay a specific amount. The action having been commenced more than six years after the sale, the defendant pleaded the Statute of Limitations. The plaintiff set up an express trust as a bar to the Statute. It was held that there was no express trust; that in case of an ascertained surplus the first mortgagee might be constructively a trustee of the surplus, but after six years, evidence could not be adduced to prove a surplus.

First mortgagee selling the mortgaged property under the statutory power is not an express trustee for the surplus.

(2-o) In *Seagram v. Tuck*,⁽²⁾ it was held, that money not accounted for and due from a receiver under the court is, by his recognizance made a debt of record, although the balance due has not been ascertained. The receiver is a trustee of such money for the persons entitled thereto, and cannot, as against them, avail himself of the Statute of Limitations, although his final accounts have been passed and the recognizances vacated. Kay, J., observes "I should be strongly inclined to hold that as to any money due from a receiver and not brought into account, either through mistake or through fraud, he would be a trustee for the persons entitled to that money. It is important to hold the position of a receiver to be one in which liability to account would not easily be barred, and so long as he was living he must be held to have been a trustee of the money. Therefore, in whichever way it is taken, whether the debt is held to be of record or to be due on a trust either would be an answer to the defence of the Statute of Limitations.

A receiver under the court is a trustee.

So long as he lives he is a trustee of the money passed into his hands.

(2-p) "It seems clear from all the cases that have been decided on this subject, that the only ground on which *cestuis que trustent* are allowed a direct remedy against a person who is under a legal obligation to pay a trust fund is either that he is a party to the trust, or privy to a breach of trust. Therefore, where neither of these

Where the trustee is barred the *cestuis que trust* is also barred.

(1) L. R., Ch., 18 p. 254. | (2) L. R., Ch., D. 18 p. 256.

grounds exist, their only remedy against such person is by action brought in the name of the trustees; and when the right of the trustees to bring such an action is barred by the Statute, the *cestuis que trustent* are necessarily entirely without remedy against him, whatever their remedy against the trustees themselves may be." (Darby and Bosanquet p. 186.)

Suits on foreign contracts.

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Foreign limitation law.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

This section refers to suits or contracts only and is silent as to suits for property or rights of other kinds.

(a) This section refers to suits instituted only on contracts entered into in a foreign country and is silent as to suits regarding property or for enforcement of rights of other kinds. The second clause saves prescription acquired under the foreign rule of limitation.

In matters of procedure both aliens and liege subjects are bound by the law of the forum.

(b) Their Lordships of the Privy Council in *Lopez v. Burslew*,⁽¹⁾ have observed, that in matters of procedure, all mankind, whether aliens or liege subjects, are bound by the law of the forum. The reasons of the rule as given by Story in his *Conflict of Laws* are, "Courts of law are maintained by every nation for its own convenience and benefit, and the nature of the remedies and the time and manner of the proceedings are regulated by its own views of justice and propriety, and fashioned by its own wants and customs." "It is not obliged to depart from its own notions of judicial order from mere comity to any foreign nation". (Story on the *Conflict of Laws*, section 581).

Law of limitation is a law relating to procedure having reference to the *lex fori*.

(c) They observe in *H. H. Ruckmaboyee v. Lullabhoy*.⁽²⁾ "In truth, it has become almost an axiom in

(1) 4 Moo. P. C. C., 300. | (2) 5 Moore, I. A. 265.

jurisprudence, that a law of prescription, or law of limitation, which is meant by that denomination, is a law relating to procedure having reference only to the *lex fori*." This axiom will apply in its integrity only when the law of limitation affects the remedy, but does not extinguish the right. The above Privy Council case was tried in the late Supreme Court of Bombay when the English Statute of Limitations was in force in the Presidency towns. It was held that the Statute applied to Hindus and Mahomedans, although the charter provided that all suits between them should be determined by their respective laws and usages or by such laws and usages that a Native Court would adopt if it happened to try the suit. In *Don v. Lippmann*,⁽¹⁾ action was brought in Scotland upon bills which were drawn and accepted, and became due in France, but the acceptor, a Scotchman, before such bills became due, returned to Scotland, and there continued till his death. It was held that the law of a country, where a contract is to be enforced, must govern the enforcement of such contract, and that more than six years having elapsed between the time of the bills becoming due and the action being brought, the Scotch Law of prescription applied, and that its effect was not prevented by the fact that the payee had taken legal proceedings in France during the absence of the debtor, and had obtained judgment against him.

(d) *Huber v. Steiner*⁽²⁾ was a suit in England upon a promissory-note made in France, where the prescription is shorter than in England. The suit was commenced in England after the expiration of the French prescription, but within six years. The defendants pleaded the French prescription. The question was whether it was a good plea. The rule being that the Statute of Limitation of a particular country barring the remedy and extinguishing the right may be set up in any other country to which the parties remove, by way of extinguishment, the court,

Defendant's plea of foreign rule of limitation which does not extinguish right, was held a bad plea.

(1) Tudor's Leading Cases on Mercantile Law, 233.

(2) Smith's Leading Cases, vol. I, p. 658.

upon examination of the French law of prescription, thought that its effect was not to extinguish the right, but, as in England only to bar the remedy, and held therefore that the defendant's plea was a bad one.

If foreign law extinguishes the right, it is a bar to an action as if the extinguishment had been by a release of the party or the law of the court in which the action is brought.

(e) In *Phillips v. Eyre*⁽¹⁾ Willes J., observed, "As to foreign laws affecting the liability of parties in respect of by-gone transactions, the law is clear, that if the foreign law touches only the remedy or procedure for enforcing the obligations, as in the case of an ordinary Statute of Limitations, such law is no bar to an action in this country, but if the foreign law extinguishes the right, it is a bar in this country equally as if the extinguishment had been by a release of the party or an act of our own legislature. This distinction is well illustrated on the one hand by *Huber v. Steine*,⁽²⁾" "and on the other hand by *Potter v. Brown*."⁽³⁾ In *Ellis v. M'Henry*,⁽⁴⁾ Boville, C. J., observes, "In the first place, there is no doubt that a debt or liability arising in any country may be discharged by the laws of that country, and that such a discharge, if it extinguishes the debt or liability, and does not merely interfere with the remedies or course of procedure to enforce it, will be an effectual answer to the claim, not only in the courts of that country, but in every other country. This is the law of England; and is a principle of private international law adopted in other countries."

The authority of story bearing on this point.

(f) "But although Statutes of Limitation or prescription of the place where the suit is brought may thus properly be held to govern the rights of parties in such suit, or, as the proposition is commonly stated, the recovery must be sought and the remedy pursued within the times prescribed by the *lex fori*, without regard to the *lex loci contractus*, or the origin or merits of the cause; yet there is a distinction which deserves consideration, and which has been often propounded. It is this. Suppose the Statutes of Limitation or prescription of a particular country do not only extinguish the right of action, but

(1) 40 L. J. Q. B., 28.

(2) 2 Beng. N. C., 202.

(3) 5 East, 124.

(4) 40 L. J. C. p. 114.

the claim or title itself, *ipso facto*, and declare it a nullity after the lapse of the prescribed period, and the parties are resident within the jurisdiction during the whole of that period, so that it has actually and fully operated upon the case; under such circumstances, the question might properly arise, whether such statutes of limitation or prescription may not afterwards be set up in any other country to which the parties may remove, by way of extinguishment or transfer of the claim or title. This is a point which does not seem to have received as much consideration in the decisions of the common law as it would seem to require. That there are countries in which such regulations do exist is unquestionable. There are States which have declared that all right to debts due more than a prescribed term of years shall be deemed extinguished; and that all titles to real and personal property not pursued within the prescribed time shall be deemed for ever fixed in the adverse possessor. Suppose, for instance, (as has occurred) personal property is adversely held in a State for a period beyond that prescribed by the laws of that State, and after that period has elapsed the possessor should remove into another State which has a longer period of prescription, or is without any prescription; could the original owner assert a title there against the possessor, whose title by the local law and the lapse of time had become final and conclusive before the removal? It has certainly been thought that, in such a case, the title of the possessor cannot be impugned. If it cannot, the next inquiry is, whether the bar of a statute extinguishment of a debt, *lege loci*, ought not equally to be held a peremptory exception in every other country. This subject may be deemed by some persons still open for future discussion. It has however the direct authority of the Supreme Court of the United States in its favour; and its correctness has been recently recognised by the Court of Common Pleas in England. In the American Courts other than the Supreme Court it does not seem hitherto to have obtained any direct approval or recognition. But in all the cases in which the question might

have been incidentally discussed in these courts, the statutes under consideration did not purport to extinguish the right, but merely the remedy." (Story on the Conflict of Laws, sec 582).

Obligor of a bond executed in one country but sued in another can avail himself of the shorter limitation of the latter.

(g) In the *British Linen Company v. Drummond*,⁽¹⁾ (10 B. & C., 903) plaintiff sued in England upon a contract made in Scotland. The defendant pleaded the Statute 21, James 1, C. 16, which prescribed a shorter period. It was held that the plea was a good one though the contract might in Scotland have been put in suit at any time within forty years. "The rule," said Tindal, C. J., delivering judgment in the case of *Trimbey v. Vignier*, (1 Bing, N. C., 151) "which applies to the case of contracts made in one country, and put in suit in the courts of law of another country, appears to be this, that the interpretation of the contract must be governed by the law of the country where the contract was made: the mode of suing, and the time within which the action must be brought, must be governed by the law of the country where the action is brought."

Case where plaintiff was held entitled to twenty years limitation to a suit brought in England on a bond executed in India.

(h) The *Alliance Bank of Simla v. Carey*⁽²⁾ was a suit brought in England on a bond to secure re-payment of 14,000 Rupees and interest executed in India in 1871. The defendant pleaded that the debt was barred, as more than three years had elapsed since payment of instalments or interest. Specialty debts in India have no higher legal value nor greater efficacy than simple contract debts; and the same period of limitation, viz., three years, bars the remedy for both, but it was held by Lopez, J., that where an action on a bond executed in India is brought in England, the bond cannot be treated as a simple contract; and therefore, as the English Statutes of Limitation apply, the remedy is not barred until after the lapse of the period of twenty years prescribed by 3 and 4, Wm. 4, c 42, S 3, as the limitation for actions on contracts under seal. The Judge observes, "if this action

(1) Smith's Leading Cases, vol. 1, p. p. 657, 658.

(2) L. R., 5 C. P. D., 429.

had been brought upon this bond in India, the plea of the Statute of Limitations as pleaded would have been a good answer." "The question is one of procedure, and as such must be determined by the law of the country where the action is brought."

(i) "In the case of the legislature of the United Kingdom making laws which will be binding upon her Colonies and dependencies, a discharge either in the Colony or in the mother-country may, by the Imperial Legislature, be made a binding discharge in both, whether the debt or liability arose in one or the other, and a discharge created by an Act of Parliament here would clearly be binding upon the courts in this country, which would be bound to give effect to it in an action commenced in the English Courts. In *Edwards v. Ronald* (Knapp. P. C., 259) it was decided that an English certificate in bankruptcy was a good answer to a debt arising in Calcutta and sued for in the Supreme Court there. In *Lynch v. M'Kenney* (2 H. Black, 554,) a defendant who was sued in England for a debt contracted in Ireland was considered as discharged by an English certificate. In the *Royal Bank of Scotland v. Cuthbert*, (Rose, 462, 486) it was held by the Court of Session that an English certificate was a bar in the Scotch Courts to a debt contracted in Scotland. And in *Sidaway v. Hay*, (3 B. & C., 12) a discharge under a Scotch sequestration in pursuance of an Act of the Imperial Parliament, was held to be a good answer to an action in the English Courts for a debt contracted in England. *Ellis v. McHenry*."⁽¹⁾

An English certificate in bankruptcy was held a good answer to a debt arising in Calcutta and sued for in the Supreme Court there.

(1) 40 L. J., C. P., p. 114.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

Exclusion of day on which right to sue accrues.

12. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion in case of appeals and certain applications.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

The words "appeal or application" were not included in section 13 of Act IX of 1871.

(a) The words "appeal or application" in this section had not been included in the corresponding section 13 of Act IX of 1871, and consequently, in *Dhonesur Kooer v. Roy Gooder Sahoy*,⁽¹⁾ an application for execution made on the 8th January, 1875, the last preceding application having been made on the 8th January, 1872, was rejected by the Lower Court as barred on the ground that the day

(1) I. L. R., 2 Calc., 386.

from which the period was to be reckoned could not be excluded. Garth, C. J., reversing the decision of the Lower Court held, that it was obviously the intention of the legislature to give the decree-holder three years, and not less, from the time of his former application, and that the only way of carrying out that intention is by excluding the day upon which the former application was made. With reference to these remarks, probably the words "appeal or application" have been inserted in section 12 of Act XV of 1877. The above decision was followed in *V. K. Gujar v. V. D. Barve*,⁽¹⁾ in which West, J., observes, "it is now a received principle that when a certain number of days are allowed for doing any act, the whole of the day to which the computation reaches is available to the person thus limited."

Still the day upon which the former application was made was excluded.

(b) In calculating the period allowed by the Indian Limitation Act, 1877, for presenting an appeal, the time during which an application for review of judgment is pending cannot be excluded as a matter of right. But, if an application for review has been presented with due diligence, and admitted, and there was a reasonable prospect that the petitioner would obtain by the review all he could obtain by appeal, the court would be justified in admitting an appeal presented out of time. Where a District Court admitted an appeal presented out of time on the ground that the appellant, having filed an application for review within the time allowed for an appeal, was entitled to exclude the time occupied in prosecuting the review, it was held that the High Court could not interfere on revision. *Vasudeva v. Chinnasami*.⁽²⁾ In the petition of *Brojendra Coomar Roy*⁽³⁾ it was held that in computing the period within which an appeal may be preferred, the time during which an application for review was pending is to be excluded. When an application to review a judgment is rejected by the High Court, the six months allowed for appeal to Her Majesty

The time that a review was pending can not be excluded as a matter of right in calculating time for appeal.

Such time excluded by District Judge was not entered with by H. C.

In the case of appeal to P. C. time runs from date of judgment and not from dismissal of review petition.

(1) I. L. R., 2 Bom., 673. | (2) I. L. R., 7 Mad., 584.

(3) B. L. R., Sup., 728.

in Council runs from the date of the judgment, and not from that of the order rejecting the review. *Soudaminee Dossee v. Maharaja Dheraj Mahatab Chand Bahadoor.*⁽¹⁾

F. B. C. H. held appellant entitled to exclude time between delivery of judgment and signing decree. (May 1886.)

(c) In *Bani Madhub Mitter v. Matungini Dassi*,⁽²⁾ it was held, that where a suitor is unable to obtain a copy of a decree from which he desires to appeal, by reason of the decree being unsigned, he is entitled under section 12 of the Limitation Act to deduct the time between the delivery of the judgment and that of the signing of the decree in computing the time taken in presenting his appeal. In this case judgment was pronounced on the 17th July, 1883. Decree was signed on the 23rd July. Appellant applied for copy on the 3rd August, and obtained it on the 11th. It was held that the fact that the decree was not in existence until the 23rd July, that is, six days after the date that it bears, entitles the appellant to deduct those six days in addition to the eight days.

Time occupied in ascertaining requisite number of folios for a copy cannot be deducted except when delay is unavoidable.

(d) In *Gunga Dass Dey v. Ramjoy Dey*,⁽³⁾ a decree was passed on the 22nd September, and application for a copy was made not until 29th, and then with insufficient folios, and the court was closed for the vacation from 30th September to 1st November, the deficient folios being filed on the day it re-opened, 2nd November; the copy was delivered on the 6th, and the appeal filed on the 14th, and the appellant claimed to be entitled to a deduction of the time occupied in ascertaining what the requisite number of folios was. It was held, that the appellant was not entitled to a deduction of that time and that the appeal was out of time. The court observe, that although parties should not be allowed to extend the period prescribed for appeal by any unnecessary delay in putting in the requisite stamps, it would be grossly unfair to disallow the application if requisite papers were not procurable, or if a mistake were made in calculating the number of sheets required, and that each case must be decided on its own merits. In this case it was argued that the paper was

Can be deducted if papers were not procurable or if a mistake was made in calculating the number of sheets required. Each case must be decided on its own merits.

(1) B. L. R., Sup., 585. | (2) I. L. R., 18 Calo., 104.

(3) I. L. R., 12 Calo., 80.

not procurable on the 29th September, and that it was put in on the next court day, 2nd November. The High Court observe: "These facts, however, would be before the Judge, who was in a better position than this court can be, to say whether the omission to file the paper on September 29th was unavoidable or intentional. The contention before the Judge apparently was, not that the paper could not be procured, but that the appellant was entitled to a deduction of the time requisite for ascertaining the number of folios required."

(e) In *Ramey v. Broughton*,⁽¹⁾ plaintiff, wishing to appeal from a decision passed against him on the original side of the High Court, dated 16th August, 1883, presented, for filing, his memorandum of appeal to the Registrar on the 5th September, 1883, but by reason of the decree not having been signed on that date no copy of the decree was presented therewith. The Registrar refused to accept the appeal. On the 6th September, the decree was signed, and on the 7th an office copy was obtained by the defendant's attorney, who, on the 8th September, served a copy at the office of the plaintiff's attorney. On the 12th September, the plaintiff applied for an office copy, which he obtained on the 13th, and on the 15th tendered such copy and his memorandum of appeal to the Registrar. The Registrar refused to accept the appeal unless under an order of court, it being in his opinion out of time. On the 6th December, 1883, a Judge sitting on the original side admitted the appeal. The appeal subsequently came on for hearing, when the defendant contended that the appeal was barred, it not having been filed within twenty days from the date of the decree. The court held that the appeal was barred. It was held upon a review, that the plaintiff having allowed five days to expire after the decree was signed before applying for a copy, and not having filed his appeal after so obtaining a copy at the earliest opportunity possible, such a delay, being entirely unaccounted for,

Appeal rejected as presented out of time as plaintiff failed to account for delay.

(1) I. L. R., 10 Cal., 652.

could not be held to be "time requisite for obtaining a copy of the decree," and that, therefore, the appeal was out of time.

This section held not to apply to Privy Council appeals.

(f) *Jawahir Lal v. Narain Das*⁽¹⁾ was an application for leave to appeal to the Privy Council from a decree of the High Court dated 20th August, 1877. The application was preferred on the 27th February, 1878, or 7 days after the time. It was contended that, under this section, the seven days' time required for obtaining a copy of the judgment should be excluded. It was held by Stuart, C. J., that this section does not apply to Privy Council appeals, and that chapter 45 of the Code of Civil Procedure contained no express provision requiring a copy of judgment appealed against.

Appeal under clause 10 of the Letters Patent does not require copy of judgment, and time requisite for copy cannot be deducted.

(g) In *Fazal Muhammad v. Phulkuar*,⁽²⁾ it was held that in calculating the period of limitation prescribed for an appeal under clause 10 of the Letters Patent, the time requisite for obtaining a copy of the judgment cannot be deducted.

Time in obtaining copy of judgment excluded in allowing a Criminal appeal.

(h) In the matter of *Jhabhu Singh*,⁽³⁾ certain accused persons were convicted, on the 29th February, 1884, and made their first application for a copy of the judgment on the 25th March, tendering stamped paper for such copy on the 26th and 29th March. The copy was prepared on the 30th, and the prisoners, who had been admitted to bail on the 5th March, presented their appeal on the 7th April, 1884, which was rejected as being out of time. It was held that the appeal ought to have been admitted.

Time taken in forwarding a prisoner's application for copy and transmitting copy to the Jail excluded.

(i) In *Queen Empress v. Lingaya*,⁽⁴⁾ it was held that in computing the period of limitation prescribed for an appeal from a sentence of a Criminal Court by Article 154 of schedule II of the Indian Limitation Act, 1877, the time taken in forwarding an application by a prisoner for a copy of the judgment and in transmitting the same from the court to the jail must be excluded, and that in

(1) I. L. R., 1 All., 644. | (3) I. L. R., 10 Calc., 642.
(2) I. L. R., 2 All., 192. | (4) I. L. R., 9 Mad., 258.

the case of such appeals, presentation of the petition of appeal to the officer in charge of the jail is, for the purpose of the Limitation Act, equivalent to presentation to the court.

Presenting to the officer in charge of the Jail is presenting to the court.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

Exclusion of time of defendant's absence from British India.

It is to be observed that the concluding words of the corresponding section in the Act of 1871, limiting the application of the section to cases where the defendant cannot, during his absence, be served with summons, have been omitted in this Act of 1877.

(a) In *Venkatasubha Pattar v. Giri Ammal*,⁽¹⁾ it was held in June, 1864, that the plaintiff's voluntary absence in a foreign country after he had attained his majority could not bar the operation of the Act. In *Domun v. Sudunkolah*,⁽²⁾ Peacock, C. J., observes there is no exception in the Limitation Act with regard to plaintiffs who are beyond seas, whether voluntarily or involuntarily, in consequence of transportation.

Plaintiff's voluntary or involuntary absence abroad does not prevent operation of limitation.

(b) Defendant's mere entry within the British jurisdiction for a temporary purpose, such as by touching in a vessel at Bombay, may not be a sufficient termination of his absence from British India (*Banning*, 87.) If a defendant, who is beyond seas when the cause of action arises, returns to England for ever so short a time, even without the plaintiffs knowledge, the time begins to run. *Gregory v. Hurrell*⁽³⁾.

Defendant's return for a temporary purpose does not terminate his absence.

(c) In *Mahomed Museeh-ood-deen v. Museeh-ood-deen*,⁽⁴⁾ it was held, that ignorance of defendant's residence does not fall within any of the provisions of the Limitation Act extending the periods of limitation prescribed by that Act.

Plaintiff's ignorance of defendant's return will not stop limitation.

Ignorance of defendant's residence does not suspend limitation.

(d) Suit and application in this Act are separately

This section does not apply to applications for execution.

(1) 2 Mad., H. C., 113.

(2) 1 B. L. R., S. N., 25.

(3) 5 B. & C., 341.

(4) 2 N.-W. P., H. C. R., 173.

treated as would appear from clause 3, section 4, and consequently the word "suit" in this section does not mean and include an application for execution. Section 3 of the Act defines that the word "suit" does not include an appeal or application. The word "suit," in section 15 of Act IX of 1871, has been so construed by a Full Bench in *Jivan Singh v. Sarnam Singh*.⁽¹⁾ *Ahsan Khan v. Ganga Ram*.⁽²⁾

This section affects only defendants who may be absent.

(e) This section is in no way affected or qualified by section 9, and the intention of the legislature is to give the plaintiff the benefit of adding to the prescribed period the time during which the defendant may have been absent after the accrual of the cause of action, otherwise a debtor by leaving India immediately after his debt became payable, could deprive his creditor of his legal remedy by staying away for three years. Although the Bombay High Court, in a suit on its original side, first held that this section must be read in connection with section 9, and that consequently defendant's absence subsequent to the accrual of the cause of action cannot avail the plaintiff, they have, in a subsequent case, overruled it, and held that subsequent absence of a defendant can be excluded.

Subsequent absence of a defendant can be excluded.

No provision for the case of joint contractors of whom one may be absent.

(f) This section does not provide for the case of several defendants one of whom only has been absent from British India after the accrual of the cause of action. (*Vide Notes, L. and M.*)

C. H.
This section does not apply to a case of defendant having a duly constituted agent in British India. (February 1884)

(g) *Harrington v. Gonesh Roy*⁽³⁾ was a suit governed by section 27, Bengal Act VIII of 1869, and instituted on the 25th May, 1881, against Mr. Crowdy, who was the manager and mookhtar of the defendant in charge of a factory, to recover land said to have been forcibly taken away. Mr. Crowdy, on the 14th June, represented that the land appertained to the factory and that he was simply the manager of the proprietor who was in England. The plaintiff when asked whether he sued Mr. Crowdy as manager or as proprietor, amended the plaint on the 16th June, by putting in the place of the defendant 'E. T. Harrington, proprietor, by W. S. Crowdy.' On the above date, more than

(1) I. L. R., 1 All., 97. | (2) I. L. R., 3 All., 185.

(3) I. L. R., 10 Calc., 440.

one year having elapsed from the date of dispossession, viz., 10th June, 1880, it was held that the suit was barred on the ground that this section does not apply to a case when, to the knowledge of the plaintiff, the defendant, though not residing in British India, is represented by a duly constituted agent and mookhtar, and that, if the interpretation of the section be otherwise, there would be no limitation at all as against a proprietor in England, although suits might be conducted for and against him, through his agent in this country, and that it is impossible to believe that such could be the intention of the law.

In this case there was an agent within plaintiff's knowledge.

(h) In *Narronji Bhimji v. Mugnirum Chandaji*,⁽¹⁾ plaintiff sued for money due on an adjusted and signed account dated 13th January, 1871. The period of limitation began to run from the date of the account. It appeared from the evidence that the defendant was in Bombay at the time of the adjustment, and shortly afterwards went to reside out of British India, in the territories of his Highness the Nizam. The plaintiff relied on section 13. Bayley, J., in rejecting the suit as barred, observes that this "section ought to be read in connection with section 9, which provides that, when once time has begun to run, no subsequent disability or inability to sue stops it. These two sections adopt, in fact, what had long before been the law of limitation in England. In *Doed Duroure v. Jones* (4 T. R. 300) it was held by the King's Bench in 1791, that 'when once five years, allowed to an infant to make an entry for the purpose of avoiding a fine, begin, the time begins to run notwithstanding any subsequent disability.' In *Cotterell v. Dulton* (4, Taunton, 826) which was a real action upon a writ of formedon, it was held that the demandant was barred by the statute of limitation (21 Jac., I C. 16). *Chambre, J.*, said: 'The ten years do not run at all while there is a continuance of liabilities, but they run without intermission from the time that the disabilities first cease.' (p. 830). *Gibbs, J.*, said: 'When once the statute begins to run, nothing stops it.' In *Rhodes v. Smithurst*, (6 M. & W. 351) de-

B. H. held in December, 1880, that defendant's absence from British India after cause of action arose will not stop the statute.

(This has been since overruled)

(1) I. L. R., 6 Bom., 103.

cided in the Exchequer Chamber, it was held that 'when time has once begun to run, no subsequent interruption to the (plaintiff's) right of suing, even from causes beyond his control, will stop it.'

A. H. dissenting from the above decision held, subsequent absence of a defendant can be excluded.

(i) In *Beake v. Davis*,⁽¹⁾ plaintiff sued in May, 1882, to recover value of goods sold to the defendant between November, 1878, and January, 1886. The plaintiff claimed exemption from limitation on the ground that during the greater part of 1880-81, the defendant was absent from British India. Straight, J., in allowing the plaintiff's claim, held that this section was in no way affected or qualified by section 9, and that its obvious scope and intention was to save creditors, subsequent to suing their debtors, the period during which debtors have been absent from British India.

B. H. followed the above ruling of A. H. dissenting from that of it own and held that a creditor is entitled to the benefit of this section if debtor, after cause of action, absents from British India.

(j) In *Hanmantram Sadharam Pity v. Arthur Bowles*⁽²⁾ one of the questions was whether a creditor was entitled to the benefit of this section, if the debtor after the accrual of the cause of action absented from British India. Birdwood, J., on the original side of the High Court, following the above decision of the Allahabad High Court, held that this section occurs in a different part of the Act, and that its provisions appear to him to be unrestricted by section 9 and to be distinctly imperative. His Lordship further observes, that if it were otherwise, a debtor, by leaving India immediately after his debt became payable, could deprive his creditor of his legal remedy by merely staying away for three years, and that a suit against defendant whose residence out of British India is known, being possible as would appear from section 89 of the Procedure Code, the words "inability to sue" in section 9 of the Limitation Act seem to be inapplicable to a plaintiff in reference to an absent person against whom he has a right of action, that the words "disability or inability to sue" in section 9 when read with the immediate context would evidently appear to refer to legal disabilities of plaintiff such as minority, insanity, and

(1) L. I. R., 4 All., 531. | (2) I. L. R., 8 Bom., 569.

idiocy, occurring in section 7, or in other words, to personal inability affecting the plaintiff himself and not to the circumstances of the person against whom he is entitled to institute a suit, and that this section seems to be therefore unrestricted by section 9 and to be distinctly imperative.

(k) In *Ahsan Khan v. Ganga Ram*,⁽¹⁾ judgment-debtor was a soldier in Her Majesty's Indian Army, and at the time that his real property was sold for the decree debt on the 20th November, 1879, he was on foreign service with his regiment at Cabool. On the 30th March, 1880, he applied to the court, under section 311 of Act X of 1877, to set aside the sale on the ground of irregularity; it was held, that this section of the Limitation Act did not apply to proceedings in execution and that the application was barred under Article 166.

Does not apply to the case of soldier defendant absent on service at Cabool when his property was sold, applying for cancellation of sale.

(1) The rule which was laid down by the Court of Exchequer in the case of *King v. Hoare*, (13 M. & W., 494, 505), and subsequently by the Exchequer Chamber in the case of *Brinsmead v. Harrison* (L. R., 7. C. P., 547) is not a rule of procedure only, but of principle,—*viz.*, that a judgment obtained against one or more of several joint contractors or joint wrong-doers operated as a bar to a second suit against any of the others. There is but one cause of action for the injured party in the case of either a joint contractor or a joint tort; and that cause of action is exhausted and satisfied by a judgment being obtained by the plaintiff against all or any of the joint contractors or joint wrong-doers whom he chooses to sue. If a plaintiff, under such circumstances, were allowed to sue each of his co-debtors or wrong-doers severally in different suits, he would be practically changing a joint into a several liability. This rule is fully explained by Baron Parke, in *King v. Hoare* (13. M. & W., 494, 505), and by Chief Baron Kelly, in *Brinsmead v. Harrison* (L. R., 7. C. P., 547). It has been founded on strict justice and public convenience, and it has been acted upon in the case of *Nuthoo Lall*

In the case of 3 joint contractors one absent from British India, creditor has to choose between remedy against an insolvent debtor and having his debt barred.

Rule is that a judgment obtained against one of several joint contractors is a bar against second suit against any of the others.

The above rule is founded on strict justice and public convenience.

(1) I. L. R., 3 All., 185.

Garth, C. J. observes that the rule leads to hardship when one of several joint contractors is absent beyond seas.

It has been remedied in England by statute.

The effect of section 43 of the Contract Act is not to create a joint and several liability in the case of joint contractors.

Under the Indian Limitation Act creditor cannot exclude the time between the death of a debtor beyond seas and grant of administration.

Under the English Limitation Act he can deduct that time.

Chowdry v. Shoukee Lall.⁽¹⁾ Garth, C. J., observes, "It is true that the rule upon which I am acting may possibly lead to some hardship in cases when one or more of several co-contractors is out of the jurisdiction, and the plaintiff, if he waits for his return, would be barred by the Statute of Limitation. But this is an injustice which the legislature, if they so pleased, could easily remedy, and which has been, in fact, remedied in England by the Statute of 19 and 20 Vict., c. 97," section 11, which directs that the period of limitation as to joint-debtors shall run notwithstanding that some are beyond seas, but expressly provides that the creditor shall not be barred as against those out of the jurisdiction by judgment recovered against those who remain within it.

(m) The above observations have been made in *Hemendro Coomar Mullick v. Rajendro Lall*,⁽²⁾ in which it was held that a decree obtained against one of several joint makers of a promissory-note is a bar to a subsequent suit against others, and that the effect of section 43 of the Contract Act is not to create a joint and several liability in such a case.

(n) Section 17, clause 2, relates to the case of a debtor dying before the accrual of the creditor's right to sue, and allows the creditor to compute in such a case the period of limitation from the time that there is a legal representative of the deceased against whom he may institute a suit; but there is no exemption in the case of a debtor dying abroad after the accrual of the right to sue. Therefore, if a debtor absent from British India dies during the statutory period or after its expiration, the creditor who is entitled under this section (13) to deduct the whole time up to the date of the death of the debtor, would not be entitled to exclude the time between the death and the time that there is a legal representative.

(o) "If a person liable to an action dies beyond seas, his representatives are liable, although the period of limitation has elapsed during his life, and time runs in their

(1) 10 B. L. R., 200. | (2) I. L. R., 3 Calc., 353.

favour, not from his death, but from the grant of administration or the time when the executor proves or acts before proving. If, however, at the time of the death the executor is absent beyond the seas, time will not run till he has both returned home and either acted in England or proved the will." "In the case of a person liable to an action remaining abroad from the time when the cause of action accrues until his death, an action, no doubt, lies against his representatives, although the six years may have elapsed in his lifetime, and time will not begin to run till letters of administration are taken out, or the executor has proved or acted; and if the executor be himself abroad at the time of the death of the testator, time will not begin to run till the executor has both returned home, and either acted in England or proved the will." (*Flood v. Patterson*, 29 Beav., 295; 30 L. J., Ch. 486)⁽¹⁾

Under the English Limitation Act he can deduct also the time that legal representative is absent beyond seas.

(p) Section 8 of the General Clauses Act, 1868, defines "British India" to mean the territories for the time being vested in Her Majesty, by the Statute 21 & 22, Vic., Chap. 106 (an Act for the better Government of India) other than the Settlement of Prince of Wales' Island, Singapore and Malacca.

British India.

What is "British India" and what are places out of it?

Chandernagore, Pondicherry, Goa, Ceylon, Cashmere, Cooch-Bihar, are foreign Countries.

14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Exclusion of time of proceeding *bond fide* in court without jurisdiction.

(1) Darby and Bosanquet, pp. 44, 104.

Like exclusion
in case of order
under Civil Pro-
cedure Code,
section 20.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure, section 20,* the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the court in which proceedings are stayed to the court in which the suit is re-instituted, shall be excluded.

Like exclusion
in case of appli-
cation.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded where the last-mentioned application is made in good faith to a court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Explanation 1.—In excluding the time during

* 20. If a suit which may be instituted in more than one court

Power to stay proceed-
ings where all defendants
do not reside within juris-
diction.

is instituted in a court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the court to stay proceedings, apply to the court accordingly ;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues

Application when to be
made.

are settled ; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

(a) Section 14 of Act XIV of 1859, enacted that the time “during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant” shall be excluded. With reference to the above wording, the Calcutta High Court, in *Maharajah Jugutendur v. Dindyal*,⁽¹⁾ observed “we think that these words are to be construed liberally and not literally according to the decision of the Privy Council, vol. 7, of Moore’s Reports, p. 357, case of *Pran Nath Chowdhry v. Rookea Begum*. In this case their Lordships laid it down as a rule that a person was not barred when ‘he had been allowed to intervene, and was a continuing party to a suit,’ and that it would be inconsistent to hold ‘that the pendency of litigation with the proceedings on it’ did not furnish a good and sufficient cause for his not proceeding in his suit.” It was held that a plaintiff is entitled to deduction, from the period of limitation, of the period of pendency of a former suit in which he, as defendant, was urging the same claim as he preferred as plaintiff in this suit.

The words “claimant, &c., engaged in prosecuting” in section 14 of Act XIV of 1859 were held to apply also to a person who, as defendant in a former suit, urged a claim of set-off.

(b) In *Hafizunessa v. Bhyrab Chunder*,⁽²⁾ plaintiffs, who were defendants in a former suit, supposed that they had a right to claim a particular sum by way of set-off, and laid claim to the same. As it turned out that their claim was against the law relating to the plea of set-off, it was

Such person cannot claim deduction of time unless the set-off was rejected for want of jurisdiction or “other cause of a like nature.”

(1) 1. W. R., p. 310. | (2) 13 C. L. R., 214.

held that the plaintiffs were not entitled to the benefit of section 14 of Act XIV of 1859; it was further held that a person who was defendant in a former suit and who unsuccessfully urged a claim of set-off cannot, in a suit brought by him, claim the benefit of the above section unless the set-off was disallowed for some defect of jurisdiction or some other cause of a like nature.

To entitle a plaintiff to the benefit of this section the former proceeding must have been prosecuted by him or by some person under whom he claims.

(c) *Rajah Borodakant v. Sookmoy*⁽¹⁾ was a suit to obtain possession of lands belonging to the plaintiff's zemindari, which were falsely declared by the defendant to be lakheraj. The court observe "an attempt has been made to obtain for the plaintiff the benefit of section 14 of the Act, and to exclude from the computation the time during which the suit for assessment was pending. But we find that that suit was not brought by the plaintiff, nor by any person under whom he claims. The plaintiff therefore cannot avail himself of this section, even if its provisions were otherwise applicable, which is very doubtful."

The former proceedings must have been prosecuted against the same defendant or the person from whom the defendant derived title.

(d) In *Mussamat Munna v. Laljee Roy*,⁽²⁾ it was held that no deduction can be allowed under section 14, Act XIV of 1859, if the former suit had been prosecuted against the wrong party.

Institution of former suit against one of the defendants in the 2nd suit was held not sufficient to entitle plaintiff to deduction under section 14 of Act XIV of 1859.

(e) In *Nilmadhub Surnokar v. Kristo Doss Surnokar*,⁽³⁾ the former suit was not brought against the same defendants but only against one of them, and it was merely in consequence of the non-joinder of the other, who has been made a party to this suit, that the former suit was non-suited. It was held that the time of its pendency cannot be deducted in computing limitation whether the dismissal of the former suit was right or wrong.

Whether a suit was pursued *bona fide* must in every case be more or less a question of degree. (Jan. 1879.)

(f) In *Sheth Kahandas v. Dahiabhai*,⁽⁴⁾ it is observed, "whether a suit was pursued *bona fide* and with diligence, must in almost every case be more or less a question of degree, and the same course of action which on the part

(1) 1 W. R., 29.

(2) 1 W. R., 121.

(3) 5 W. R., 281.

(4) 1 I. L. R., 3 Bom., 182.

of a plaintiff, in Bombay, within reach of skilled advice, would indicate bad faith or want of diligence, might be consistent with good faith and diligence in a Mofussil Community." In *Hiralal v. Badri Das*,⁽¹⁾ the Privy Council held that a proceeding taken *bond fide* and with due diligence, before a Judge whom the judgment creditor believed *bond fide*, though erroneously, to have jurisdiction, was a proceeding to enforce the decree within the meaning of section 20 of Act XIV of 1859.

P. C. on *bond fide* in section 14 of Act XIV of 1859.

(g) In *Chunder Madhub Chuckerbutty v. Bissessuree Debea*,⁽²⁾ the question was whether plaintiff can deduct from the period of limitation the time that a former litigation on the same subject was pending, the former case having been non-suited. The plaintiff's appeal from the order was unsuccessful. It was held that according to section 14 of Act XIV of 1859, a plaintiff was not entitled to deduct the time occupied by him in prosecuting the former suit in which he was non-suited, much less the time occupied in appealing from that decision and the time intervening between the non-suit and the filing of appeal. Peacock, C. J., observes, "I am of opinion that the words 'or other cause' must mean a cause of like nature as defect of jurisdiction. Now, a defect of jurisdiction would be a cause that would not include any neglect on the part of the plaintiff either in stating his case or in other respects." Jackson, J., observes, "It appears to me that the inability of the court must be either some unavoidable circumstance over which no one has any control, or something incidental to the court itself, and unconnected with the acts of the parties."

F. B. C. H. The time that a suit was pending which was non-suited held cannot be deducted. (9th Mar. 1866.)

Defect of jurisdiction would not include plaintiff's neglect either in stating his case or in other respects.

Inability of court must be some circumstance over which no one has any control.

(h) In *Karuppan Chetti v. Veriyal*,⁽³⁾ it was held that section 14, Act XIV of 1859 applied to the case in which the plaintiff was unable, after due diligence, to procure due service upon the defendant of the summons to appear and answer the claim, and consequently to prosecute the suit to a decision, and would prevent a suit against the

M. H. Under the corresponding section of Act XIV of 1859, plaintiff's inability to procure service of summons held, entitled him to the benefit of that section. (Jan. 1868.)

(1) I. L. R., 2 All., 792.

(2) 6 W. R., 184.

(3) 4 Mad., H. C. B., p. 1.

M. H.
Even accidental
circumstances
beyond control
preventing suc-
cess.
(April 1863.)

defendant's representatives from being barred. The said section was also held applicable wherever the success of the proceeding had been prevented by causes not arising from laches on plaintiff's part, in other words, by accidental circumstances beyond his control. *Ramakristna v. D. Lakshmi Devamma*.⁽¹⁾

Time that a suit
was pending in
the court of 1st
instance which
rejected it for
want of juris-
diction, and the
time that plain-
tiff's appeal
against it was
pending, were
deducted under
Act XIV of 1859.
(Dec. 1866)

(i) In *Raj Krishto Roy v. Beer Chunder Joobrag*,⁽²⁾ it was held that, where a suit was brought and dismissed for want of jurisdiction, and an appeal was preferred in which the Lower Court's decree was affirmed, and then when a suit was brought in the right court, the period which elapsed between the decision of the first court and the disposal of the appeal should be excluded in computing the period of limitation prescribed for the suit by Act XIV of 1859. The court observe, "we also think that he is engaged in prosecuting the same suit '*bona fide*, and with due diligence', whilst he is considering whether or no he shall appeal against the decision of the first court. The time within which the appeal is required to be brought is fixed by the law, in order to give the unsuccessful party time to take advice and come to a conclusion whether or no he should contest the decision which has been given against him. And it seems to us that, if he appeals at any time within the prescribed period he ought to be considered as proceeding with due diligence."

Plaintiff is en-
gaged in prose-
cuting a civil
proceeding while
he is consider-
ing whether or
not he should
appeal against
the Lower
Court's decision

(j) Dismissal of the former suit for want of jurisdiction, whether the decision is legally right or wrong, entitles the plaintiff to claim a deduction in the computation of the period of limitation. *Hurro Chunder Roy v. Shoorodhonnee Debia*.⁽³⁾ In *G. Lee Morris v. Sapattheetha Pillay*,⁽⁴⁾ it was held that the period during which a suit is pending in a court not having jurisdiction, is to be excluded from the period of limitation provided by Act XIV of 1859, and the fact that the second suit, in bar of which the Act is pleaded, was instituted before the court not having jurisdiction had disposed of the first suit, is

Dismissal for
want of juris-
diction, right or
wrong, entitles
plaintiff to such
deduction.
The time during
which Special
Appeal was
pending was
also deducted.

The fact that
the first suit was
pending when
the second suit
was brought
held immate-
rial.

(1) 1 Mad., H. C. R., 320.

(2) 6 W. R., 308,

(3) 9 W. R., 410.

(4) 6 Mad., H. C. R., 45.

immaterial. In *Luchinarain Mittar v. Khettro Pal Singh Roy*,⁽¹⁾ it was held, in July, 1873, that the plaintiff was entitled to deduct the time during which he was *bonâ fide* prosecuting with due diligence a suit for the same purpose in a court not having jurisdiction. In this case the Privy Council held that according to the true construction of section 14, the whole time occupied in the former suit, including the time during which the special appeal to the High Court was pending, must be deducted. Principal Sudr Amin gave decree for plaintiff. The District Judge reversed the decision and it was confirmed by the High Court. It was found as a fact that the suit was prosecuted *bonâ fide*.

(k) In *Ram Dass v. Watson*,⁽²⁾ it was held that prosecuting an appeal or other proceeding which is expressly prohibited by law is not prosecuting a civil proceeding in good faith. In *Vencatasawmy Naidu v. Vencataraju Naidu*,⁽³⁾ a regular suit was filed under section 269 of Act VIII of 1859, after the expiration of one year from the date of the final order, and the plaintiff pleaded that an intervening period, spent by him in appealing from the order, should be excepted, under section 15 of Act IX of 1871, in applying the statute. It was held that the filing of the appeal was not the institution of a suit within the meaning of the section. An appeal from an order under section 269 of Act VIII of 1859, (corresponding with section 335, of Act XIV of 1882) is expressly prohibited by the Code.

(l) *Ajoodhya Pershad v. Bisheshur Sahai*,⁽⁴⁾ prosecuted *bonâ fide* and with due diligence, was dismissed in appeal for want of jurisdiction in the court of first instance, and a second suit was afterwards brought in a right court. It was held that in computing, under section 14 of Act XIV of 1859, the period of limitation of the suit, the time between the decree of the court of first instance and the institution of the appeal should be excluded.

Preferring an appeal expressly prohibited by law is not prosecuting a civil proceeding in good faith.

Where appellate court dismissed suit for want of jurisdiction, time between original decree and institution of appeal excluded under section 14 of Act XIV of 1859. (May 1874.)

(1) 13 B. L. R., 146.

(2) W. R., Gap. No. 371.

(3) 4 Ind. Jur., 20.

(4) 6 N.-W. P. H. C., 141.

A. H. declined to deduct in the case of a suit rejected in appeal for defect of parties.
(May 1875.)

(m) The plaintiffs sued the son of a deceased debtor without ascertaining whether or not he was of age, and then, when the plaint was returned to them, they sued the minor's mother also without ascertaining whether she was legally constituted guardian of the minor. The Lower Courts determined the suit, but the High Court was unable to support their decrees in consequence of the defect, which came to light in special appeal. The plaintiffs having brought a second suit, it was held that, in computing the period of limitation, they were not entitled, under the provisions of section 15 of Act IX of 1871, to an exclusion of the time occupied by them in prosecuting the first suit. The court doubted whether, assuming the case fell under the provisions of the section, the plaintiffs could be said under the circumstances to have prosecuted the first suit with due diligence and in good faith. *Bhal Singh v. Musammat Gauri*.⁽¹⁾

Court doubted whether the plaintiff could be said to have prosecuted the first suit with due diligence and in good faith.

Period deducted where suit was wrongly prosecuted in Revenue Court and dismissed for want of jurisdiction.
(Dec. 1874.)

(n) Where a part-proprietor of a certain Talook, who was also co-sharer in a fractional portion thereof, brought suits against his co-talookdars, in the Revenue Courts, for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction, and afterwards brought a suit for the rent for the same period in the Civil Court, it was held, that the suit was not one for the recovery of arrears of rent within the meaning of section 29, Ben. Act VIII of 1869. but was governed by the provisions of Act XIV of 1859. The suit was one for rent of land, and fell within the scope of clause 8, section 1 of that Act; and the plaintiff was, in computing the limitation, entitled under section 14, to a deduction of the period during which he was prosecuting his suit in the Revenue Courts. *Gobindo Coomar v. Manson*.⁽²⁾

B. H. allowed 30 days to an appeal wrongly presented to Judge instead of to Collector.
(April 1871.)

(o) When an appeal had been preferred by the plaintiff to the Judge, which ought to have been preferred to the Collector, the High Court made an order giving the plaintiff thirty days within which to prefer his appeal to the Collector instead. *Maharani of Burdwan v. Parikhit*

(1) 7 N.-W. P. H. C., 284. | (2) 15 B. L. R., 56.

Rawtra.⁽¹⁾ In *Kristo Inder Roy Chowdhry v. Roopinee Bebee*,⁽²⁾ the court, finding that the appeal had been preferred *bond fide* under a mistake to the wrong court, ordered the case to be transferred to the right court—that is to say, to the court of the Collector for disposal. In *Erschine v. Gholam Khezur*,⁽³⁾ appeal from the Deputy Collector's decision under section 9 Act VI of 1862, lay to the Zilla Judge and not to the Collector. While so, the plaintiff preferred his appeal to the Collector, who reversed the decision. The defendant appealed against it to the Zilla Judge at Beer Bhoom instead of to the proper District Judge. The Judge of Beer Bhoom, considering he was competent to entertain the appeal, reversed the Collector's order as made without jurisdiction. The plaintiff specially appealed to the High Court, who observed, "plaintiff was wrongly advised and took his case to the wrong tribunal. He ought not, we think, under the circumstances, to be shut out altogether from obtaining a decision on his appeal, and we therefore set aside the judgment of the Zilla Judge and the Collector, and declare that the plaintiff is at liberty, if so advised, to appeal, within 20 days from the date of this judgment, to the Zilla Judge having jurisdiction in the matter."

C. H. directed transfer to Collector of an appeal wrongly presented to Judge.

A case of a peculiar nature. C. H. allowed 20 days' time to prefer to the proper Judge appeal wrongly presented to Collector and then to a wrong Judge.

(p) A Hindu of the Southern Maratha country, having two sons undivided from him, died in 1871, leaving a will disposing of ancestral estate substantially in favor of his second son, excluding the elder, who claimed his share in this suit. In 1861, a suit brought by this elder son against his father and brother to obtain a declaration of his right to a partition of the ancestral estate was dismissed on the ground that he had no right in his father's lifetime to compel a partition of moveables; and that as to the immoveables the claim failed, because they were situate beyond the jurisdiction of the court. It was held that the suit was not barred under the Limitation Act XIV of 1859, sec. 1, cl. 13. As to the immoveables; setting aside

P. C. held plaintiff entitled to deduct time that his former suit for partition was pending, but rejected for want of jurisdiction as to real property, and non-accrual of cause of action as to moveables. (Under Act XIV of 1859.)

(1) 7 B. L. R., App., 15. | (2) 6 W. R., Act X, Rul. 56.

(3) 9 W. R., 520.

the fact that the plaintiff had remained in possession of one of the houses of the family which had been treated by the father as continuing to be part of the joint property, the decision of 1861, based as to the immoveables on the absence of jurisdiction to declare partition of them, caused this part of the claim to fall under the provisions of Act XIV of 1859, section 14. As to the moveables; assuming that they could, on the question of limitation, be treated as distinct from the moveable, and that no payment had been made within twelve years before this suit by the ancestral banking firm to the plaintiff, the adjudication of 1861, whether in law, correct or incorrect, had been that the elder son could not assert his rights in the moveables until his father's death. The defendant in this suit, who had taken the benefit of that judgment, could not now insist that it did not suspend the running of limitation on the ground that his brothers might have appealed from it, if erroneous. *Lakshman Dada Naik v. Ramchandra Dada Naik.*⁽¹⁾

To entitle to deduction of time, cause of action must be the same. In a case of consolidated suits after dismissal of former separate suits, deduction was held not permissible. (Dec. 1871.)

(q) In *Joitaram Bechar v. Bai Ganga*,⁽²⁾ plaintiff brought two suits, one against one branch of the family, and the other against another branch, to recover a share of that portion of the property which was in the possession of each, and these suits were rejected on the ground of their having been improperly brought. It was held that, in bringing a consolidated suit against all sharers for a general partition, the plaintiff was not entitled to deduct the time occupied in prosecuting his former suit. In *G. Lee Morris v. Sivaramayyan and others*,⁽³⁾ plaintiff was for sometime before the suit prosecuting suits against defendants separately for the arrears of rents alleged to be barred, and they were all dismissed on the ground that the plaintiff could not sue the defendants separately as they had executed a *mutchilika* jointly. In this suit, brought against all the defendants jointly, the plaintiff claimed the benefit of section 14 of Act XIV of 1859.

(1) I. L. R., 5 Bom., 48. | (2) 8 Bom., H. C. R., A.c. 228.

(3) 7 Mad., H. C. R., 242.

It was held that the cause of action was not the same, for in the former suits the obligation sued upon was several, while here it is joint, and that the court which decided the former suits not only did not fail to decide them, but did decide them.

(r) In *Cheigu Nangiah v. Pidatala Venkatupphah*,⁽¹⁾ plaintiff presented his plaint on the 5th May, 1870, to the District Munsiff of Nundialpet, who had no jurisdiction; the District Munsiff returned the plaint on the 7th May to the plaintiff, to be presented to the proper court within one month from the date on which it was returned. The claim was barred by limitation on the 11th May, 1870, and a plaint was presented to the proper court on the 21st May, 1870. It was held that the suit was barred. The High Court observe, "as the presentation of a plaint is the commencement of a suit, we should probably have held that the bar of the suit was saved by the provisions in section 14 of the Act of Limitations (XIV of 1859) if it had appeared that by excluding the time between the presentation and the return of the plaint, the period of limitation was not exceeded, but the fact is otherwise." It was not the duty of the court to name a time for the presentation of the plaint in the proper court under section 3 of Act XXIII of 1861, and the case must be looked at as if the court had not named a time. In *Abhoya Churn Chuckerbutty v. Gour Mohun Dutt*,⁽²⁾ District Munsiff decreed the plaintiff's suit, and the Subordinate Judge on appeal reversed his decision, holding that the Lower Court had no jurisdiction, and ordered the plaint to be returned. It was held that the period after the decree in appeal during which plaintiff was waiting to receive back his plaint before re-filing it in the Small Causes Court, could not be deducted.

Court returning a plaint for want of jurisdiction cannot limit a time for its presentation to the proper court, and the plaintiff is not entitled to deduct the time so limited, under this section (August 1870.)

But the period that plaintiff waited to get back his plaint from court was not deducted.

(s) In *Timal Kuari v. Ablakh Rai*,⁽³⁾ plaintiff, who was illegally ejected from certain land before 1873, applied in January, 1876, under section 95, of Act XVIII of 1873, for possession, alleging, that though section 95 of that

A. H. observed that the provisions of the corresponding section 15 of Act IX of 1871, are not applicable to suits or applications under Act XVIII of 1873. (June 1876.)

(1) 5 Mad., H. C. R., 407. | (2) 24 W. R., 26.

(3) I. L. R., 1 All., 254.

Act provided for institution of such suits within six months from the date of dispossession, he was entitled to the benefit of section 15 of the Limitation Act, as he was prosecuting a proceeding for the recovery of land in courts which had no jurisdiction to try such suits. Following the ruling of the Privy Council in *Unnoda Persaud Mookerjee v. Kristo Coomar Moitro*,⁽¹⁾ in which it was held that the analogous provisions of section 14 of Act XIV of 1859 do not apply to suits under Act X of 1859, which is a special law, and *Mahomed Bahadur Khan v. The Collector of Bareilly*,⁽²⁾ in which it was held that the provisions of the Limitation Law do not apply to enlarge the period of limitation prescribed by Act IX of 1859, the court observed that section 15 of Act IX of 1871, which corresponds to this section, did not apply to suits or applications under Act XVIII of 1873.

B. H. held section 14 of Act XIV of 1859 inapplicable to suit for damages under section 42 of the Bombay Act VII of 1867. (April 1873.)

(t) Plaintiff in May, 1872, sued a police constable for damages for having made a false report. The Spb-judge, on the 5th August, 1872, rejected the suit for want of jurisdiction. On the 7th August, 1872, plaintiff filed a fresh suit in the proper court which rejected it as barred under section 42 of Bombay Act 7 of 1867. The High Court affirmed the Judge's order, holding that section 14 of Act XIV of 1859 was not applicable to the plaintiff's case. *Hari Ramchandra v. Vishnu Krishnaji*.⁽³⁾

N.-W. P. H. C. held section 14 of Act XIV of 1859, inapplicable to a suit under Act XIV of 1863. (Feb. 1873.)

(u) In *Mussumat Nona v. Dhoomun Dass*,⁽⁴⁾ it was held that section 14 of Act XIV of 1859 apply only to periods of limitation prescribed by that Act, and consequently no deduction can be made in the period of limitation of a suit under Act XIV of 1863, of the time in which a party was engaged in prosecuting his suit in a wrong court.

A. H. held that misjoinder was not a cause of "like nature" occurring in this section, and declined to deduct the time that a suit was on the District Judge's file. (Jan. 1880.)

(v) Two persons joined in instituting a suit in a Subordinate Judge's Court on the 26th August, 1878, while the period of limitation was to expire on the 21st September,

(1) 15 B. L. R., N.p. 60.

(2) L. R., 7 Ind. App., P. C. 167, Sc. 13, B. L. R., 292.

(3) 10 Bom. H. C., 204. | (4) 5 N.-W. P. H. C., 30.

1878. The suit was transferred to the District Court, which, on the 16th September, 1878, returned the plaint to the plaintiffs on the ground that they should have sued separately. On the 23rd September, 1878, one of them presented a fresh plaint to the District Court which rejected it on the 1st October, 1878, on the ground that it had no jurisdiction. The plaintiff appealed to the High Court, which affirmed the order on the 28th January, 1879, and returned the plaint on the 10th April, 1879. The plaintiff on the same day re-presented it to the Sub-court. It was held that the plaintiff could claim to exclude only the period between the 23rd September, 1878, and 10th April, 1879, and not the period between 26th August and 16th September, 1878, as the inability of the District Court arose from misjoinder of plaintiffs, a defect for which they were responsible. *Ram Subhag Das v. Gobind Prasad*.⁽¹⁾

(W) On the 2nd September, 1869, a suit was instituted for, among other things, the possession of land claimed under a Kobala, dated the 31st October, 1867. The suit was dismissed on appeal on the ground of misjoinder of causes of action. On the 14th April, 1881, the plaintiff sued for possession of the land only. It was held, that the suit was not barred, that "misjoinder of parties" and "defective jurisdiction" are causes of a similar nature, and that the plaintiff was entitled to have the deduction of the time that the former suit was pending. *Deo Prasad Sing v. Pertab Kairee*.⁽²⁾ In *Mohun Chunder Koondo v. Azam Gaze*,⁽³⁾ Sir Barnes Peacock, C. J., held that bringing a suit *bond fide* against a person who had died before the suit was instituted was a cause of a similar nature within the meaning of section 14 of Act XIV of 1859. But a plaintiff who, before the expiry of the period of limitation, sues certain persons whom he erroneously supposes to be the representatives of his deceased debtor, and after the expiry of the period obtains leave to

C. H. dissenting from the above ruling held that misjoinder and defective jurisdiction were causes of a similar nature. (August 1869.)

Bringing a suit against one who had died before suit was a cause of similar nature under section 14 of Act XIV of 1859.

But not suing a person erroneously supposed to be the representative of a deceased debtor. (March 1873.)

(1) I. L. R., 2 All., 683. | (2) I. L. R., 10 Cal., 87.
(3) 12 W. R., 45.

amend his plaint by substituting the true representatives as defendants, was held not entitled to deduction of time lapsing between the date of the suit and that of amendment. *Kavasji Sorabji v. Barjorji Sorabji*.⁽¹⁾

Time that a suit was pending deducted though it was rejected for non-production of the Collector's certificate under the Pensions' Act XXIII of 1871. (April 1879.)

(x) In *Putali Meheti v. Tulja*,⁽²⁾ plaintiff had first filed a suit in July, 1876, in respect of the same subject, and founded on the same cause of action as the present suit, and when it had reached its latest stage, in November, 1877, the defendant for the first time objected to the court's jurisdiction on the ground that the plaint had not been accompanied by the Collector's certificate as required by Act XXIII of 1871. The Sub-judge rejected the plaintiff's application for time to produce the required certificate and rejected the suit on that ground. In the present suit the question was, whether the time that the former suit was pending can be deducted in computing the period of limitation. West, J. being of opinion that the non-production of the certificate did not necessarily constitute such a want of due diligence on the plaintiff's part as to disentitle him to the deduction of time allowed by this section, held that the case was one of an error committed in good faith and not one of want of due diligence, and that the plaintiff was entitled to have the time deducted.

West, J. held that non-production of certificate was an error committed in good faith.

M. H. declined to deduct the time that a former suit was pending which was rejected for non-production of a certificate under Regulation IV of 1831. (April 1893.)

(y) *Ramakristna Castrulu v. Darba Lakshmidemma*⁽³⁾ was a suit for Inam lands instituted in 1849, the cause of action having accrued nearly 12 years before. The suit was dismissed on the ground that the plaintiff had no certificate as required by regulation IV of 1831. Eight years afterwards, the plaintiff having obtained the requisite certificate, commenced a suit for the lands; it was held that the institution of the former suit had not suspended the Statute of Limitations, and that the plaintiff was barred.

Time that a plaint was on the file of a wrong court deducted. (Jan. 1879.)

(z) This section corresponds to section 15 of Act IX of 1871. In the case of *Sham Kant Banerjee v. Baboo Gopallal Tagore*,⁽⁴⁾ a Division Bench ruled that no

(1) 10 Bom. H. C. R., 224. | (3) 1 M. H. C. R., 320.
(2) 1 L. R., 3 Bom., 223. | (4) 1 W. R., (Civ. Rul.) 338.

deduction could in any case be allowed for the institution of a suit in the wrong court. West, J., being of opinion that this would deprive the saving clause of the Limitation Act of its whole effect, observed in *Sheth Kahandas Narandas v. Dahiabhai*,⁽¹⁾ "Whether a suit was pursued *bonâ fide* and with diligence must in almost every case be more or less a question of degree, and the same course of action which on the part of a plaintiff in Bombay, within reach of skilled advice, would indicate bad faith or want of diligence, might be consistent with both good faith and diligence in a Mofussil community unfamiliar with the refinements of the Mercantile law, and practically *inops consilii* on such matters."

(2-a) In *Obhoy Churn Nundi v. Kritartha Moyi Dossee*,⁽²⁾ Subordinate Judge, seven months after the institution of this suit, returned the plaint to be filed in a Munsif's Court on the ground that the suit had been overvalued. As there was nothing to shew want of *bonâ fides* in the plaintiff's instituting the suit, the time during which the plaint was on the Sub-judge's file was deducted in computing the period of limitation. Similarly, in *Chandi Dasi v. Janakiram*,⁽³⁾ the time that a plaint was in Munsif's Court which returned it for want of jurisdiction was deducted under Act XIV of 1859.

Time that a
plaint was on
the file of a
court until re-
turned was de-
ducted.
(April 1881.)

(2-b) In *Rajendro Kishore Singh v. Bulaky Mahton*,⁽⁴⁾ plaintiff's manager's suit for the value of trees cut down and carried away by the defendant was dismissed on the ground that the manager had no cause of action. When the suit was brought by the plaintiff it was held that the time occupied by the manager's suit could not be excluded as the suit was dismissed neither from defect of jurisdiction nor from any cause of a like nature.

C. H.
Time occupied
by suit rejected
as brought by
manager cannot
be excluded.
(May 1881.)

(2-c) Section 374 of the C. P. C., makes reference to suits withdrawn and not to applications. Melville, J., in *Pirjade v. Pirjade*,⁽⁵⁾ observes that the bar created by

Decree-holders
withdrawing
application
with permis-
sion to present
a fresh one, not
entitled to the
benefit of this
section.
(Sept. 1882.)

(1) I. L. R., 3 Bom., 182. | (3) 1 B. L. R., S. N., 12.

(2) I. L. R., 7 Calc., 284. | (4) I. L. R., 7 Calc., 367.

(5) I. L. R., 6 Bom., 681.

section 374 of the Code is, in such cases, not removed by this section, as causes for which the withdrawal of a suit or application may be permitted, are not causes "of a like nature" with defect of jurisdiction. This has been referred to in *Kifayat Ali v. Ramsingh*,⁽¹⁾ in which A. H. expressed their dissent from *Ramanadan Chetti v. Periatambi*⁽²⁾ which held in February, 1883, that an application for execution which does not comply with the requirements of section 235 of the C. P. C., and which having been returned to the decree-holder for amendment, has not been proceeded with, may still suffice under cl. 4, article 179 of schedule II. of the Limitation Act.

Time that plaintiff prosecuted the previous suit rejected for limitation, was not deducted. Suit was rejected for the plaintiff's not having set out in his plaint payment endorsed on the pro-note sued on and signed by defendant's agent. (Feb. 1885.)

(2-d) In *Nobin Chunder Kurr v. Rojomoye Dossee*,⁽³⁾ plaintiff on the 31st of March, 1884, sued in the Small Cause Court, on a pro-note dated 24th April, 1879. In his plaint he omitted to set out certain payments endorsed on the pro-note signed by the defendant's agent, which payments, if so set out, would have had the effect of saving the suit from being barred by limitation. The Small Cause Court rejected the plaint on the 24th April, 1884, under clause c. of section 54 of the Civil Procedure Code as barred on the face of the plaint. On the 25th of April, 1884, the plaintiff brought a fresh suit on the same pro-note, setting out in his plaint how it was that he claimed exemption from limitation. It was held that in computing the period of limitation, the plaintiff was not entitled under this section to exclude the time during which he was prosecuting the previous suit. In *Chunder Madhub Chuckerbutty v. Bissesuree Debea*,⁽⁴⁾ Full Bench held under section 14 of Act XIV of 1859, that the time that a suit was on the file, rejected for not setting out boundaries in the plaint, could not be deducted from the period of limitation when the plaintiff filed a fresh plaint in respect of the same subject matter.

Under Act XIV of 1859 time of the former suit rejected for not setting out boundaries was not deducted.

Time that a plaint was on the file until High Courts' refusal to sanction its entertainment deducted. (Jan. 1879.)

(2-e) In *Sheth Kahandas Narandas v. Dahiabhai*,⁽⁴⁾

(1) I. L. R., 7 All., 359.

(2) I. L. R., 6 Mad., 250.

(5) I. L. R., 8 Bom., 182.

(3) I. L. R., 11 Cal., 264.

(4) B. L. R., Sup. Vol., 553.

plaintiff, as payee of an order drawn by defendant at Ahmedabad, where he (defendant) resided, on a firm at Bankok in Siam and dishonored on presentation, sued defendant and an agent of the Bankok firm who resided at Surat, in the Subordinate Judge's Court at Surat. Permission to proceed with the suit against the defendant (the drawer) having been refused by the High Court, plaintiff withdrew his plaint, and filed his suit in the court at Ahmedabad against the drawer alone. The Subordinate Judge rejected the claim as barred by limitation. It was held by the court in appeal that, under section 15 of the Limitation Act, (No. IX of 1871) a deduction might properly be made of the time during which the suit was pending in the court at Surat, and that the deduction on this account was to run from the filing of the plaint to the final refusal of the High Court to allow the suit to proceed at Surat against the drawer.

(2-f) *Khetter Mohun Chuckerbutty v. Dinabshy Shaha*⁽¹⁾ was a suit brought under section 77, of the Registration Act for the purpose of obtaining registry of a deed which provides for the institution of such suits within thirty days after making the order of refusal by the Registrar. In this case, Registrar's refusal was dated 12th December, 1879. The plaintiff first filed this suit in a Munsif's Court on the 7th January, 1880. On the 28th September, 1880, the Munsif decided that he had no jurisdiction and returned the plaint on the 29th. On the 30th the suit was filed in the proper court. It was held that the plaintiff was entitled to the benefit of this section.

C. H.
This section applies to all Acts providing a special limitation for suits. This was a suit under the Indian Registration Act. (Dec. 1888.)

(2-g) In *Guracharya v. The President of the Belgaum Town Municipalities*,⁽²⁾ the suit was brought under section 86, of the Bombay Municipal Act VI, of 1873, in the court of the District Judge of Belgaum, on the 30th January, for the cancellation of an order passed by the Municipality on the 31st October, 1881. The plaint was returned for

B. H.
Benefit of this section allowed in a suit under the Bombay Municipal Act. (June 1884.)

(1) I. L. R., 10 Calc., 265. | (2) I. L. R., 8 Bom., 529.

want of jurisdiction on the 6th February, 1882, and was subsequently presented on the same day to the Subordinate Judge of Belgaum. Section 86, of the Municipal Act required institution of such a suit within three months next after the final order. It was held that the provisions of this section, taken together with section 6 of the Act, applied to the case so as to exclude the period between 30th January and 6th February, 1882, in computing the period of three months.

B. H.
Application made within time to a conciliator for execution of a decree passed before the Dekkan Agriculturists' Relief Act 17 of 1879 held not to save limitation. (October 1881.)

(2-h) In *Manohar v. Gebiapa*,⁽¹⁾ plaintiff applied on the 7th July, 1877, for execution of his decree. The Sub-judge directed that the application must be accompanied by a conciliator's certificate, which the plaintiff applied for, on the 5th July, and obtained on the 17th July, 1880, and renewed his application to the court on the 23rd July, 1880, that is after the expiration of three years. It was held in October, 1881, that a conciliator appointed under the Dekkan Agriculturists' Relief Act, not being a court, the presentation of an application to him for execution of a decree would not save the limitation, if the application to the proper court was time-barred.

B. H.
But time occupied in obtaining such a certificate to sue was excluded in computing the period for it. (April 1884.)

(2-i) In *Durgaram Maniram v. Shripati*,⁽²⁾ plaintiff's attachment of debtor's property having been raised on the 7th October, 1879, at the instance of the defendant, he filed the suit on the 14th December, 1880, to have it declared that the property was liable to be sold. The suit was brought more than a year after the property was released. The necessity to procure a conciliator's certificate before the entertainment of suit to which an agriculturist, residing within any local area, for which a conciliator has been appointed, is a party, is not limited to suits specified in section 3 of Act XVII of 1879, but extends to all matters within the cognizance of a Civil Court. It was held by a Division Bench (Nanabhai Haridas and Birdwood J. J.,) that, as such certificate was necessary before a suit was commenced, in computing the period of limitation for such a suit, the time intervening

(1) I. L. R., 6 Bom., 31. | (2) I. L. R., 8 Bom., 411.

between the application to the conciliator and the grant of a certificate by him must be excluded.

(2-j) In *Parry and Co. v. Appasami Pillai*,⁽¹⁾ plaintiff sued to recover the price of Indigo sold to the defendant in February, 1875, the payment of which was decreed by the tribunal of Pondicherry in November, 1875. The ground of the present action was, first the judgment of the foreign court, and secondly, the alleged sale and delivery of indigo. The defendants pleaded that the French Court had no jurisdiction, and that the claim was barred. Muttusami Ayyar, J., held that there was nothing in the language of this section rendering it inapplicable to proceedings instituted in a foreign court. In appeal, a Division Bench (Turner, C. J. and Forbes, J.,) observe, "The French Courts were not, from defect of jurisdiction or otherwise, unable to entertain the claim. In the proper exercise of a jurisdiction conferred on them by the law of France, they have entertained the claim and passed decrees which are effectual in French territory. The respondents elected the forum, and although under the circumstances the British Courts may refuse to enforce the decree they have obtained, this circumstance does not bring the case within the provisions of section 14 of the Limitation Act. The claim on the contract is then barred by Limitation." They further observe, "We desire to be understood as expressing no opinion whether under any circumstances those provisions allow the deduction of the period occupied by litigation in foreign courts, for on another ground we hold them inapplicable in this case."

This section does not apply to plaintiff who sued in foreign court which according to its laws had jurisdiction, but according to law of British India had no jurisdiction whatever.

Court expresses no opinion whether under any circumstances this section can be applied to suits prosecuted in foreign courts.

(2-k) In *Mangu Lal v. Kandhai Lal*,⁽²⁾ plaintiff and defendant having had some pecuniary dealings adjusted their accounts in October, 1881, which resulted in a balance of Rs. 1,457, of which defendant paid Rs. 885-15-0 and reduced the balance to Rs. 600. The plaintiff in 1873 having purchased the equity of redemption of certain property which the defendant held on mortgage, sued the latter in November, 1884, for redemption. In that suit

Where plaintiff's claim, in his redemption suit, to deduct from the mortgage amount, money due by defendant on account, was disallowed on his failing to prove oral agreement so to deduct, he was held not entitled to the benefit

(1) I. L. R., 2 Mad., 407. | (2) I. L. R., 8 All., 475.

of this section when he sued for the money due on account.

the plaintiff deducted from the mortgage amount the balance on account, alleging that in December, 1881, it had been settled that whenever he should claim redemption he should be allowed to take credit the balance due on account. In February, 1885, the plaintiff's claim to deduct the balance was disallowed on his failing to prove the alleged oral agreement, and he was directed to redeem on payment of the full mortgage debt. The plaintiff brought the second suit in March, 1885, and claimed the benefit of this section by stating that the time that the former suit was pending should be deducted. The court held that although it could not be doubted that the plaintiff prosecuted the former suit *with due diligence and in good faith*, and that that suit was *another civil proceeding*, yet, as the former suit was not founded *upon the same cause of action* and as it was disallowed not for a *defect of jurisdiction or any cause of a like nature*, the plaintiff was held not entitled to the benefit of this section.

Exclusion of time during which commencement of suit is stayed by injunction or order.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

This section does not apply to decrees the enforcement of which was stayed by injunction.

(a) This section does not apply to application for execution of decrees where such execution has been stayed by an injunction, or order, pending either the disposal of an appeal or a regular suit instituted for the purpose of removing obstructions to execution. But in the case of an injunction issued pending the disposal of a regular suit, the difficulty is got over by treating the application of the decree-holder after the removal of the injunction, as an application for the continuance or revival of the former proceedings. In the case of suspension of execution pending the disposal of an appeal against a decree, no difficulty has been felt as the decree under execution

When stayed pending disposal of suit, difficulty is got over by treating the application as revival of former proceedings. No difficulty when

becomes final only after the disposal of appeal (*vide Note, I.*)

stayed pending disposal of appeal.

(b) Civil Procedure Code of 1882, section 320, provides for execution of decrees by a Collector under special rules that the local Government may prescribe from time to time. Section 323 provides for the adoption of a scheme by the Collector according to his discretion, of liquidation of money decrees. Section 325-A., clause I, places restriction on alienation in any way by judgment-debtor or his representative and prohibits prosecution of remedies by decree-holders. Clauses II and III run as follow:—“During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323. The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.”

C. P. C. of 1882 allows exclusion of time that a Civil Court is prohibited from executing a decree referred to Collector for execution.

(c) One of two partners died. His widow sued the surviving partner to wind up the partnership, and on the 29th October, 1880, obtained an injunction prohibiting the collection of debts due to the firm. The order intimated that application might be made to recover debts that might become barred. On the 20th September, 1882, the widow obtained a decree, awarding to her a very large sum. After finding it difficult to execute the decree, she got a receiver appointed, who brought a suit to recover a debt due by a debtor upon mutual accounts, balanced up to the 20th March, 1880. The defendant pleaded that the receiver's appointment was *ultra vires* and that the debt was barred. It was held, that although an application might have been made for a special order to recover any debt that might become barred, the person, having the right to sue, was not bound to make an application, and that the plaintiff was entitled to a deduction of the period from the date of the injunction up to the

Creditor or Receiver can deduct the period from the order prohibiting collection of debts to the date of Receiver's appointment.

Order to sue for debt that might become barred does not disentitle the creditor to deduct that time.

date of the receiver's appointment. *Shunmugam v. Moindin*.⁽¹⁾

Time that a bond was under attachment excluded under Regulation II of 1802, sec. 18, cl. 4. (January 1863.)

(d) Where a bond was seized under legal process of attachment after it had become due, but before the lapse of 12 years from its date and remained under attachment for several years, it was held, that there was "good and sufficient cause" for the lapse of time within the meaning of Regulation II of 1802, section 18, clause 4, and that a suit on the bond was therefore not barred. *Kadar Bacha Sahib v. Rangasami*.⁽²⁾

This section does not apply to suspension of execution of a decree by injunction.

(e) In *Lutful Huq v. Sumbhudin Pattuck*⁽³⁾ Princep, J., observes, "it is contended that execution is barred under Article 179, schedule II, Act XV of 1877, and it has been brought to our notice that, under the terms of section 15 of that Act, a decree-holder would not be entitled to any exclusion of time during which execution was suspended by an injunction, in calculation of the period allowed by the Law of Limitation. It might thus happen that, if the injunction remained in force for three years, execution could be absolutely barred. This appears to be the present state of the law." In *Kalyanbhai Dipchand v. Ghanasham Lal Jadunathji*,⁽⁴⁾ it was held, that as this section only relates to injunctions staying the institution of suits, and as the word "suit" does not include an application, the time during which an injunction obtained against the execution of a decree was in force cannot be deducted in computing the period of Limitation within which an application for execution may be made. In this case execution had been stayed by injunction pending the disposal of a suit brought by a third party.

Injunction had been issued pending the disposal of a suit by a third party.

B. H.
The time that a decree was under attachment should not be deducted from the time within which execution should be taken out. (July 1874.)

(f) In *Chandi Prasad Nandi v. Raghunath Dhar*,⁽⁵⁾ it was held in May, 1869, that in calculating the period of three years from the date when effectual proceedings had last been taken to keep alive a decree, the period during which the decree had remained under attachment in execution of a decree against the judgment-creditor should

(1) I. L. R., 8 Mad., 230. | (3) I. L. R., 8 Cal., 248

(2) 1 Mad., H. C. R., 150. | (4) I. L. R., 5 Bom., 29.

(5) B. L. R., 3 App., 52.

be deducted. In *Mir Ajmuddin v. Mathura Das*,⁽¹⁾ the Bombay High Court held, in July, 1874, that the period during which a decree remains under attachment should not be deducted from the time within which proceedings must be taken for the execution of the decree. A notice or order to judgment-debtor *A*, not to pay the amount decreed to his judgment-creditor *B*, will not in any case serve to keep the decree alive in favor of *C*, a judgment-creditor of *B*, at whose instance the notice or order is issued, much less in favor of other judgment-creditors of *B*, with whom *A*, had nothing to do.

C. H. had held otherwise in May 1869.

(g) In *Krishna Chetty v. Rami Chetty*,⁽²⁾ on the last application for execution, dated September, 1871, judgment-debtor's property was attached in November, 1871, but the attachment was withdrawn on the claim preferred by a third party; and the application was struck off the file in February, 1872. The plaintiff sued to hold the property liable for his decree, and lost his case in the court of first instance in October, 1873, but succeeded in appeal in October, 1874, on which date the Appellate Court held the property liable. The decree-holder subsequently applied for execution within three years from February, 1872. A Division Bench (Morgan, C. J., and Kindersley, J.) in October, 1875, held "the application as made is barred, for the appointed time has expired and we are not authorized by the Act to apply to proceedings in execution, provisions enacted for extending the period in certain cases where the limitations of suits is in question." In this case, the decree was one passed in a suit instituted before the 1st of April, 1873, and under section 1, clause A. of Act IX of 1871, Act XIV of 1859 governed the application for execution, but the High Court following their own decision in *Naranappa v. Nanna Ammal*⁽³⁾ and the decision of the Bombay High Court, dated June, 1874, in *Govind Lakshuman v. Narayan*⁽⁴⁾ held that the application was governed by Act IX of 1871, and that

M. H. held that under Act IX of 1871 the time, that a judgment debtor prosecutes another suit to remove obstruction to execution, cannot be deducted from the period of limitation for execution. (October 1875.)

(1) Bom. H. C., 11, p. 206. | (3) 8 Mad., H. C. R., 97.

(2) 8 Mad., H. C. R., 99. | (4) 11 Bom., H. C. R., 111.

Another Madras case to the same effect.
(October 1875.)

Court observed that under old Act XIV of 1859 deduction could have been made

Decree-holder's application for sale of attached property after disposal of claims, and suits respecting it, was treated as renewal of former application for sale.
(Disposed of under Act XIV of 1859.)
(March 1860.)

B. H.
Application for execution after dissolution of the injunction issued pending the disposal of a suit, was treated as revival of the execution proceedings.
(Sep. 1890.)

time should be computed from the date of the prior application. In *Mahalakshmi v. Lakshmi*,⁽¹⁾ in execution of a decree, dated June, 1868, attachment of property was withdrawn in February, 1870, on the claim of a third party, and the application was dismissed on the same date. The decree-holder's regular suit dated October, 1870, was disposed of in his favour in October, 1873, and the decree was affirmed on appeal in April, 1874. The decree-holder, in June, 1874, applied for execution. The High Court held that the application was barred. The Judges observe that the litigation between the decree-holder "and a successful claimant would have saved the decree-holder under the old Act, for it was a proceeding taken within the meaning of section 20, but the new Act makes the date of applying to the court to enforce, &c., the time from which the computation must be made. We can no longer, therefore, make deductions on account of proceeding between the decree-holder and third persons."

(h) In *Ragava Pishardi v. Ayuman Jiri Mankal Thupan*,⁽²⁾ a decree-holder applied for the sale of certain property then under attachment in the suit. The court refused to issue process for the sale on the ground that the property could not be sold as certain claims and suits respecting it were still pending. The claims and suits having been determined, the application was renewed when more than three years had elapsed between the date of the order on the 1st application and the date of the renewed application. It was held in March, 1869, that the second application was not barred, the order upon the first application operating simply as a temporary stay of process for the sale of the property, and there was a pending proceeding to enforce the decree during the stay.

(i) In *Kalyan Bhai Dipchand v. Ghanasham Lal Jadunathji*,⁽³⁾ it was held, that where an application for execution has been made and granted, but the right to execute has been subsequently suspended by an injunction

(1) 8 Mad., H. C. R., 105. | (2) 4 Mad., H. C. R., 261.

(3) I. L. R., 5 Bom., 29.

or other obstacle, the decree-holder may apply for a revival of the proceedings within three years from the date on which the right to apply accrues, i. e., the date on which the injunction or other obstacle is removed. Such cases were held to fall under Article 178. This was a case where execution was stayed pending the disposal of a regular suit. The Allahabad High Court adopted the same view in *Basant Lal v. Batul Bibi*,⁽¹⁾ which was a case of suspension of execution pending the disposal of an objector's suit, and they also followed it in *Buti Begam v. Nihal Chand*,⁽²⁾ in which execution had been stayed, pending the disposal of an appeal against the decree. In *Lutful Huq v. Sumbhudin Pattuck*,⁽³⁾ in which execution of an *ex-parte* decree was suspended, pending the disposal of an appeal by the defendant, it was held, that though the decree-holder was not entitled to deduct the time that execution was suspended by court's order, his application, made more than three years after the decree, is not barred, the decree not becoming final until the dismissal of the appeal. The words "where there has been an appeal" used in clause 2, Article 167 of Act IX of 1871, occur in clause 2 of Article 179 of Act XV of 1877. With reference to these words the Allahabad High Court in *Sheo Prasad v. Anrudh Singh*,⁽⁴⁾ held that those words contemplate and mean an appeal from the decree and do not include an appeal from an order dismissing an application to set aside a decree under section 119 of Act VIII of 1859.

(j) Section 29 of the Punjab Act, IV of 1872, operates by way of an injunction, as it provides "such order of discharge shall preclude any creditor whose claim is registered from suing the debtor in respect of such claim, unless it be shewn that the debtor has acquired property, since the order of discharge, out of which the claim might have been defrayed." With reference to these provisions it was held in *Wazir Mahomad Khan v. Mahomad Imam Khan*, Punjab Record No. 66 of 1874, referred to by Mr. H. D.

Such case was held to fall under Article 178.

A. H. followed the above decision in July 1883 and also applied to an execution case.

C. H. held stay of execution pending appeal does not affect decree-holder, decree becoming final only after disposal of appeal.

Can the time occupied by proceedings in bankruptcy be excluded under this section?

(1) I. L. R., 6 All., 23.

(2) I. L. R., 5 All., 459.

(3) I. L. R., 8 Cal., 248.

(4) I. L. R., 2 All., 273.

C. P. C. of 1883 does not provide for stay of legal proceedings against debtor's person and property during the pendency of application for insolvency.

Rivaz, in his work on limitation, that the time occupied by proceedings in bankruptcy with regard to the claim of a registered creditor must be excluded. Chapter 20 of the Civil Procedure Code of 1882 contains no such provision or provision to stay legal proceedings against the person and property of a judgment-debtor pending the disposal of his application for a certificate of insolvency. Section 352 requires creditors to prove their debt, and a schedule to be framed, and provides that "the declaration under section 351" (declaration of insolvency) "shall be deemed to be a decree in favour of each of the said creditors for their said respective debts." Section 353 provides for applications by unscheduled creditors. Section 357 provides against an insolvent discharged under section 351 being arrested or imprisoned on account of any of the schedule debts. It also provides for attachment and sale of debtor's property attachable for debt, whether previously or subsequently acquired, until the debts due to the scheduled-creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of discharge.

(k) Creditors opposing the application may consist of decree-holders who may have taken out execution, and persons who may have instituted regular suits to recover debts in other courts. While they are entitled to oppose the application and prove their debts in the courts in which the petition is pending, they need not enforce their decrees or prosecute their suits in the other courts. In the absence of any express provision, notice served upon creditors will not have the effect of an injunction or order binding the other courts to stay proceedings.

Indian Bankruptcy Bill sections 9 and 10 provide for stay of proceedings.

(l) The Indian Bankruptcy Bill No. 6 of 1886, introduced into the Imperial Council on the 20th May, 1886, propose, by sections 9 and 10, to empower the court entertaining a bankruptcy petition to stay by an order any suit or other legal proceeding pending before any Judge or in any court in British India, and service of the order on such Judge or court. The latter part of clause 2, section

9, proposes to empower any court in which proceedings are pending against a debtor, on proof that bankruptcy petition has been presented against the debtor, either to stay the proceedings or allow them to continue on such terms as it may think just.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale, shall be excluded.

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.

(a) This section is one of the five sections, namely, 9, 13, 14, 15, 16, which provide for the extension of the prescribed period of limitation under certain circumstances. The provisions of this section were for the first time enacted by section 17 of Act IX of 1871. Without imposing the conditions of good faith, diligence and want of jurisdiction as the other sections do, this section simply entitles the purchaser to exclude the time during which the judgment-debtor has been prosecuting a *proceeding* to set aside the sale. The corresponding section, 17 of Act IX of 1871, used the word "suit," which has been altered in this Act (of 1877) into "*proceeding*." Plaintiff in a suit may be judgment-debtor within the meaning of that term used in this section, if he owed the defendant costs of the suit or any sum of money under the terms of the decree for which his property may be attached and sold.

This section does not impose any condition as sections 9, 13, 14 and 15 do.

(b) Distinct provisions similar to those contained in this section had not been enacted in the Limitation Act of 1859. The Calcutta High Court in *Gopaul Chunder Ghose v. Raj Chunder Dutt*,⁽¹⁾ held that in a suit for possession of property by a purchaser at a sale in execution of a decree, limitation will not reckon during the time that the judgment-debtor's case to set aside the sale was pending in the Civil Court. The case, as reported, is as follows :—

Even before Act IX of 1871 C. H. held a purchaser entitled to exclude the time that judgment-debtor's case to set aside sale, was pending.

(1) 2 W. R., Misc. A., 9.

The petitioner purchased some property belonging to a judgment-debtor, Tripoora Dossee, so far back as 1846. He applied for certificate and possession; but the Civil Court in 1847 held that, till the suit brought by Tripoora to set aside that sale was disposed of, no order for possession could be given. Tripoora's case was not finally disposed of till 1856, and in 1861 the petitioner applied for possession under the provisions of sections 259 and 263 of Act VIII of 1859. This application was struck off in 1862. The petitioner applied again for possession in 1863, and the first court held that the application was barred by limitation. On appeal to the Judge, he rejected the petition, on the ground that the law did not provide for an appeal in such cases. We think the view of the law taken by the Judge is correct; but looking at the decision of the first court, we do not see very clearly how the Principal, Sudder Ameen, has been able to apply the law of limitation, for it is clear that the petitioner is entitled to all the time during which Tripoora's case was pending in the Civil Court. As, however, there is no appeal to this court, we think the proper course for the petitioner to follow is to ask for a review of the judgment of the first court, if so advised. This appeal is rejected with costs.

Effect of death
before right to
sue accrues.

17. When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal

representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

(2) "It is laid down that 'a cause of action cannot exist, unless there be also a person in existence capable of suing.' Hence, if a person to whom a cause of action would have accrued if he were living, die intestate before the cause of action accrues, the statute does not begin to run till administration has been taken out; this was first held in Stamford's case, which, although decided on the Statute of Fines, 4 Hen. 7, c. 24, applies in principle to the Statute of James; it was approved of in Cary v. Stephenson, and ultimately established in Murray v. East India Company. (5 B. and Ald., 204.) In that case certain bills drawn in favor of a testator were accepted, and became payable after his decease; no executor was appointed, and administration with the will annexed was granted after the bills became payable; the first administrator died, and administration *de bonis non*, with the will annexed, was granted to the plaintiff. More than six years had elapsed since the bills became payable, but not since the time of the grant of the first letters of administration. It was decided by the Court of Queen's Bench, that, on the principle laid down above, the time did not begin to run till such grant. A common case to which this principle would apply is, where an administrator brings an action on a policy effected on the life of the intestate. On the same principle, it was held that if a suit abated by the death of the plaintiff intestate, his personal representative might file a bill of revivor or supplement within six years after administration was taken out, however long a time might have elapsed between the abatement and the granting of the letters of administration. It will be

A cause of action cannot exist unless there be also a person in existence capable of suing.

Executor may sue before proving.

observed that in all these cases the plaintiff was administrator, and not executor, and it is clear that the rule does not apply where an executor is appointed, and after the cause of action accrues proves the will, for the right of an executor to sue vests in him by virtue of the will, and he may commence the action, although he has not yet proved, and, therefore, it cannot be said that there was not a person in existence capable of suing."⁽¹⁾

Where an executor has been appointed by will, it cannot be said that there is not a person capable of suing.

No one has a complete cause of action until there is some one that he can sue.

(b) "As a cause of action, or, more strictly speaking, a perfect cause of action, cannot exist unless there is a person in existence capable of suing; so, on the other hand, a perfect cause of action being the right to prosecute an action with effect, no one has a complete cause of action until there is somebody that he can sue. If, therefore, a person is dead at the time when a cause of action would have arisen against him, the time does not begin to run against the plaintiff until there is a personal representative in existence whom the plaintiff may sue." "If, however, an executor has acted before proving, as he thereby renders himself liable to be sued, the time would run from his acting, and not from his proving the will. In *Webster v. Webster*, (10 Ves. 93) in which this point was first decided, it seems to have been overlooked that the testator might have been sued in his own life-time. It is, however, perfectly clear that the time having begun to run against a plaintiff in the life-time of a person against whom he has a right of action, the want of a personal representative to be sued will not prevent the time continuing to run."⁽²⁾

If an executor acts before proving the will, time would run from his acting.

If time began to run against plaintiff in the life-time of the person liable to be sued, want of a personal representative will not prevent the time running.

Legal representative under Indian Succession Act is executor or administrator who has taken out probate or letters of administration.

Legal representative of a Hindu, Jaina, Sikh or Buddhist coming within the

(c) In the case of persons governed by the Indian Succession Act, none but an executor who has taken out probate, or an administrator who has obtained letters of administration from a court of competent jurisdiction, can be their legal representative in a suit relating to the property of the deceased. (*Vide Note K.*)

(d) In the case of Hindus, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay, if the

(1) Darby and Bosanquet, p. 31. | (2) Darby and Bosanquet, p. 33.

deceased does not die intestate, his executor or administrator with the will annexed is his legal representative within the provisions of the Hindu Wills Act XXI of 1870. (*Vide Notes O. and S.*)

(e) In the case of Hindus and Buddhists who would come within the Hindu Wills Act XXI of 1870 when a deceased left a will, if a person dies intestate, and in the case of other Hindus and Buddhists, and Mahomedans, and persons exempted from the operation of the Indian Succession Act by section 332 of that Act, the grantee of probate or administration alone is legal representative if probate or administration has been applied for and granted under the probate and administration Act V of 1881. (*Vide Note P.*) But neither Act V of 1881, nor any other Act operates so as to vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person. The object of this Act is to provide for the grant of probates of wills and letters of administration to the estates of deceased persons in cases where the Indian Succession Act does not apply.

(f) Under the above Act V of 1881, an executor of any Hindu or Mahomedan Will may establish his right in a Court of Justice without taking out probate. (*Vide Note R.*)

(g) Where the deceased is a Hindu, Mahomedan or Buddhist, or a person exempted from the operation of the Indian Succession Act, and to whom the Hindu Wills Act does not apply, or whose estate has not been represented under the Probate and Administration Act V of 1881, there is often much difficulty in ascertaining who is his representative. (Broughton's notes of cases on C. P. C., published in 1884, p. 317.)

(h) In any case a person who takes possession of the property of a deceased person without letters of administration or probate, constitutes himself representative to the extent of the property he takes. (*Vide Note T.*)

When the heir of a deceased person is undetermined, an administrator may be appointed in the Bombay

Hindu Wills Act is his executor or administrator who has taken out probate or letters of administration.

Legal representative of a Hindu or Buddhist coming within Hindu Wills Act if he left a will, dying intestate, and of other Hindus and Buddhists and Mahomedans and persons exempted from the Indian Succession Act, is grantee of probate or administration if obtained under Act V of 1881.

Under the above Act an executor without probate may establish his right in court. Difficulty is felt in ascertaining the representative of a Hindu, &c., not coming within Hindu Wills Act XXI of 1870, and whose estate has not been represented under Act V of 1881.

In any case person taking a deceased's estate constitutes himself his representative.

Where the heir of a deceased is undetermined

Bombay Regulation VIII of 1877 provides for appointment of an administrator. (July 1878.)

Presidency, (but not the scheduled Districts, see Act XV of 1874) under Bombay Regulation VIII of 1827, section 9, and he represents the estate. *Shivalingaya, v. Nagalingaya*.⁽¹⁾ There is a similar Regulation applicable to the Madras Presidency,—Regulation III of 1802, section 16.

Limitation for suit for account against Manager's heir does not commence until administration to Manager's estate is obtained. This decision illustrates the 2nd paragraph of this section.

(i) In *Lawless v. Calcutta Landing and Shipping Co., Limited*,⁽²⁾ it was held that, in the case of a person employed as Manager, the right of the employer is to have an account rendered by the person employed whenever he is called on to do so under reasonable circumstances. In this case, there was nothing to show that the Manager was ever called on during his life-time to account for the money now sued for or to account generally. He died in August, 1877, and his agency terminated. Wilson, J., observed that, by his death, the employer acquired a fresh right to have an account rendered by his representative, and that right is recognised by Article 89, and that as the Manager died in August, 1877, the right accrued then, but no administration was taken out till July, 1880, and that the case was protected by this section under which limitation will not commence to run until administration has been taken out to the Manager's estate.

To a suit for money due by a deceased agent, time was held to run from his death under Act XIV of 1869 which contained no special provision.

(j) In *Kali Krishna Pal Chowdhry v. Srimati Jagatara*⁽³⁾ which was a suit against a deceased agent for balance of money drawn by the deceased as general agent of the plaintiff in the management of his business, the agent died before he was asked to render an account. It was held that the period of limitation should be computed not from the time when the agent drew the monies, but from the time of his death.

Under the Indian Succession Act the legal representative for all purposes of a deceased person governed by that Act is his executor or administrator.

(k) Under section 179 of the Indian Succession Act X of 1865, legal representative of a deceased person governed by that Act is the executor or administrator as the case may be, for all purposes, and all the property of the deceased person vests in him as such. Under the above section,

(1) I. L. R., 4 Bom., 247 | (2) I. L. R. 7, Calc., 627.
(3) 2 B. L. R., Ac., 139.

and also section 190, no person could be dealt with as the legal representative unless he had taken out probate or had obtained letters of administration.

He can be recognised as such only when probate is taken or letters of administration are obtained.

C. H. held so.
(March 1878)

In *Pogose v. Beebee Dishkoon Waris Calchuck*,⁽¹⁾ P. N. Pogose, Zamindar of Dacca, a British subject domiciled in British India, died in November, 1876. Previous to his death, several decrees had been passed against him and he had conveyed his property to the Official Trustee for the benefit of his creditors. No letters of administration to the estate of the deceased were taken out. On the application of one of the judgment-creditors for execution, the Subordinate Judge of Dacca granted it against the property of the deceased which was in the hands of his son. A Division Bench (Markby and Princep, J J) in March, 1878, set aside so much of the Sub-judge's order that made the son of the deceased a party to the execution proceedings, and observed, "The original judgment-debtor was dead; he was an Armenian, and therefore succession to his estate is governed by the Succession Act, and the only person who could be his representative is the person indicated by that Act."

(1) Where the deceased person was not a Hindu, Buddhist, (Parsi, as amended by section 2 of Act IX of 1881) or Mahomedan, or a person exempted from the operation of the Indian Succession Act, the Judge of the District is directed, by section 64 of Act II of 1874, the Administrator-Generals' Act, to take possession of the property of the deceased lying within his district, and to hold possession of it until the estate is represented by some one who shall obtain a grant of probate, or letters of administration, from a competent court, or a certificate from an Administrator-General, which can be given (see section 36, *et seq.* of the same Act) only when the value of the property left by the deceased does not exceed 1,000 Rupees. The decree cannot be executed against the Judge or against the property pending the grant of probate, administration,

When a deceased person is not a Hindu, Buddhist, Mahomedan, or a person exempted from the Indian Succession Act, the District Judge is required to take possession of the estate as custodian under section 64 of Act II of 1874.

(1) 2 C. L. R., 278.

The Judge is in no sense representative, but is required to deliver the property to the legal representative.

If the executor does not apply for administration, the Administrator-General must apply where the value of property exceeds 1,000 Rs.

If the value does not exceed 1,000 Rs. Administrator-General may himself administer or grant certificate to the executor or widow or to a creditor.

The person entitled to administer may apply to court for probate.

Creditor of a deceased person governed by the Indian Succession Act, cannot be defeated by the trick of keeping secret the existence of a will until his claim is barred.

or a certificate. The Judge is in no sense the representative of the deceased, but is merely the custodian of the property, and is directed to deliver it, not to an execution creditor, but to the representative of the deceased; the estate is unrepresented and steps should be taken to get it represented. If the property exceeds 1,000 Rupees in value, and the executor or next-of-kin, i.e., to say, the absolute next-of-kin, not merely the next-of-kin in India, does not apply for administration within a month, the Administrator-General must apply (see Act II of 1874, sec. 16) within a reasonable time after he has notice, and he may apply before that period has elapsed; (see sec. 23); but where the property is not of greater value than 1,000 Rs., the Administrator-General need not apply; and in that case he may grant a certificate to the executor, or widow, or any person entitled to administer, other than a creditor (sec. 36), or to a creditor after the lapse of three months, unless he elect to take charge of the estate himself without letters of administration (sec. 37), or the person entitled to administer may apply in the ordinary way to a court of competent jurisdiction for probate or letters of administration. (Broughton's Civil Procedure Code, 1878, p. 311.)

(m) In *Prosunno Chunder Bhuttacharjee v. Kristo Chytunno Pal*,⁽¹⁾ a widow who was sued as representative of a deceased debtor did not defend the suit. After decree, her brother, obtaining probate of the will said to have been left by the deceased, procured release from attachment, of the property of the deceased which had been taken in execution of the decree. The decree-holder brought a second suit. Markby, J., observes, "The question is really this—are the creditors of a deceased person liable to have their claims defeated by the trick of keeping secret the existence of a will until their claims are barred by limitation? If this had been the estate of a European British subject, there would have been no difficulty. Under section 206 of the Succession Act, the plaintiff, as

(1) I. L. R., 4 Calo, 345.

a creditor, might have applied for letters of administration. Then, whether the party in possession of the will had produced it or not, the administration would have gone on, and the creditors would not have lost their remedy. But section 206 of the Succession Act does not apply to Hindus."

(n) In *Sukh Nandan v. Rennick*,⁽¹⁾ *S* sued some of the heirs to a person governed by the Indian Succession Act, 1865, who died intestate, such heirs being in possession of a part of the estate of the deceased, for a debt due to him by the deceased, and obtained a decree against such persons. In execution of this decree, property belonging to the deceased was sold. Before the sale-proceeds were paid to *S*, *B*, an heir to the deceased obtained in the District Court letters of administration to the estate of deceased, and an order for payment to her of such sale-proceeds. Thereupon *S* sued *B* for such sale-proceeds and to have the District Court's order directing payment thereof to her set aside. It was held that, with reference to sections 190 and 191 of the Indian Succession Act, 1865, the decree obtained by *S* against persons who did not legally represent the estate of the deceased, and the proceedings taken against such persons in execution of such decree gave *S* no title to the sale-proceeds, which formed part of the estate of the deceased, and the suit was therefore not maintainable.

A. H.
Sale-proceeds realized by sale of property of an intestate governed by the Succession Act in execution of decree, obtained against his brother and aunt, were held to belong to the legal representative who obtained letters of administration and not payable to the decree-holder.

(o) The Hindu Wills Act XXI of 1870, was passed on the 19th July, 1870, and its preamble is as follows:— "Whereas it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of Hindus, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; it is hereby enacted as follows." "In the case of a will of a Hindu, &c., falling within the said Act, "the 179th section of the Indian Succession Act also applied, and enacted that 'the executor or administrator' (with a copy

The legal representative of a deceased Hindu coming within the Hindu Wills Act (XXI of 1870) is his executor or administrator who has obtained probate or letters of administration.

(1) I. L. R., 4 All., 192.

of the will annexed) 'of a deceased person, is his legal representative for all purposes, and all the property of the deceased person' (including, of course, his rights under a decree) 'vests in him as such.' Section 187 of the same Act also applies, and 'no right as an executor or legatee can be established unless a court of competent jurisdiction within the Province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under section 180,' which is also applicable; see sec. 2, of Act XXI of 1870."⁽¹⁾ All the sections of the Indian Succession Act relating to grants of probates and letters of administration which were formerly incorporated in the Hindu Wills Act, with the exception of section 187, which provides against an executor or legatee establishing a right without obtaining probate or letters of administration, are now removed from that Act by section 154 of Act V of 1881, and are re-enacted *verbatim* in Act V of 1881, with the exception of section 187. Section 187 still remaining incorporated by reference with the Hindu Wills Act, shows that probate is necessary in the case of such Hindu Wills as fall within the Hindu Wills Act, and the omission of similar provision from Act V of 1881, which applies to all Hindus and Mahomedans, shows that an executor of any Hindu or Mahomedan will, not falling within the Hindu Wills Act, may establish his right in a Court of Justice without taking probate. *Shaik Moosa v. Shaik Essa.*⁽²⁾

All the sections of the Indian Succession Act as to grant of probate, &c., except section 187 have been removed from the Hindu Wills Act and re-enacted in Act V of 1881.

Retention of section 187 shows that probate is necessary in the case of persons coming within the Hindu Wills Act. Omission thereof from Act V of 1881 shows that executor of a Hindu not falling within the Hindu Wills Act can establish right in a court without probate.

When a Hindu to whom the Hindu Wills Act would apply if he left a will, dies intestate, his heirs are his legal representatives, the Act not providing for grant of administration of the estate of an intestate.

(p) In *Greender Chunder Ghose v. Mackintosh*,⁽³⁾ Pontifex, J., observes, "a Hindu being thus competent up to the day of his death to alien his lands without regard to his creditors, a disposing power by will, unknown in primitive times, came into existence by a kind of evolution or development of the law; and it would be natural that by the same process the devisee should, with respect to his testator's creditors, be saddled with the same liabilities as the heir had theretofore been saddled with

(1) Broughton's notes of cases on C. P. C., 1884, p. 315.

(2) I. L. R., 8 Bom., 241. | (3) I. L. R., 4 Calc., 907.

respect to the creditors of his ancestor. This principle has been recognized in Act VIII of 1859 and Act X of 1877, both of which Acts, however, are intended only as Codes of Procedure. Sections 203, 210, and 211 of Act VIII of 1859 deal with the subject, the former section using the word 'representative,' and the other sections the words 'legal representative'; but whether any distinction between these terms was intended, it is not necessary to consider. In the Act of 1877, the corresponding sections are 252 and 234, in each of which the words 'legal representative' are used. But though this Act was passed after the Hindu Wills Act, by section 179, of which a distinct meaning is given to the words 'legal representative,' namely, an executor or administrator with the will annexed, in whom all the property of a testator vests, I think sections 252 and 234 are intended to apply to the heir of an intestate." Section 200 of the Indian Succession Act provides for grant of letters of administration of the estate of a person who died intestate to persons who are connected with him either by marriage or consanguinity, and in the absence of any such person, section 206 provides for grant of administration to a creditor. These 2 sections occur in part 29 of the Act, which is not made applicable to Hindus, &c., coming within the Hindu Wills Act, XXI of 1870. But section 23 of the Probate and Administration Act V of 1881, which is applicable to all Hindus, provides for a creditor taking out letters of administration when it is not applied for by the person who would be entitled to the whole or any part of the estate of an intestate.

(q) "Except under the Hindu Wills Act, the courts in the mofussil do not in India grant letters of administration to the estates of natives dying intestate, or probate, if they have wills. Regulation V of 1799, (which has been partially repealed by section 4 of Act XXI of 1870) which is in force throughout Lower Bengal and the North-Western Provinces, except the scheduled districts (see Act XV of 1874), prohibits the interference of the court except

Section 2 of the Hindu Wills Act does not make sections 200 and 206 of the Indian Succession Act applicable to Hindus, &c., coming within the former Act.

But section 23 of the Probate and Administration Act, applying to all Hindus, provides for grant of administration to a creditor, if it is not applied for by person entitled to the estate of an intestate.

Until before the Probate and Administration Act of 1881, which can be extended to the mofussil, the mofussil Courts, except under the Hindu Wills Act, had no power to grant probate, &c., to the estate of a deceased native.

on regular complaint; see also Madras Regulation III of 1802, section 16. But where there are debts of the deceased person to be collected, the courts are empowered to grant certificates, which enable the certificate holder to give a good receipt to the debtor who cannot be compelled to pay the debt without the production of the certificate, unless it can be shewn that he does so from fraudulent or vexatious motives. It does not constitute the holder a representative for any other purpose, nor can it be more than *prima facie* sufficient to induce the court to make him representative for the purpose of a suit, and to the extent of the debts he has collected under it, or other property of which, assuming himself to be the representative, he has taken possession.”⁽¹⁾

B. H. held that except in cases falling under the Hindu Wills Act, an executor of any Hindu or Mahomedan Will may establish his right without taking out probate under Act V of 1881. (January 1884.)

(r) In *Sheik Moosa v. Sheik Essa*,⁽²⁾ A, one of three executors of a Mahomedan will, none of whom had taken out probate, desired to carry on a suit originally instituted by their testator to recover a share of an estate, all the other parties to the suit being desirous that the suit should be dismissed. West, J., who tried the case, being of opinion that, since the passing of Act V of 1881, a Mahomedan cannot claim to represent the estate of his testator unless he has taken out probate, rejected the suit. It was held by a Division Bench (Sargeant, C. J. and Bayley, J., that, A, under section 92 of the Probate Act (V of 1881), being only one of three executors, could not carry on the suit without first taking out probate of the testator's will. Previously to the passing of the Probate Act, (V of 1881) executors appointed by such wills as fell within the Hindu Wills Act (XXI of 1870) acquired the same estate and interest in the property of their deceased testator with the same restrictions in representing the estate in a Court of Justice as obtained under English Law. See the following note.

Before Act V of 1881 an executor of a Hindu Will falling within Act XXI of 1870, had the same right in representing the deceased's estate as an executor under English Law.

(s) All the sections of the Indian Succession Act (X of 1865) relating to grants of probates and letters of administration, which were formerly incorporated in the

(1) Broughton on C. P. C. of 1877, p. 313. | (2) I. L. R., 8 Bom., 241.

Hindu Wills Act, (XXI of 1870) are now, with the exception of section 187, removed from that Act by section 154 of Act V of 1881, and are, with the exception of 187, re-enacted *verbatim* in Act V of 1881. Section 187, however, still remains incorporated by reference with the Hindu Wills Act. (See section 154 of Act V of 1881.) The result is that probate is necessary in the case of such Hindu Wills as fall within the Hindu Wills Act. But the omission, from Act V of 1881, (which applies to all Mahomedans and Hindus) of any provision corresponding to section 187 of the Indian Succession Act, and the retention of that section in the Hindu Wills Act, shows that it was the intention of the Legislature that, except in cases falling under the Hindu Wills Act, an executor of any Hindu or Mahomedan Will may establish his right in a Court of Justice without taking out probate. In cases, however, falling within the provisions of Act XXVII of 1860, debtors have still the right, under section 2 of that Act, of insisting upon a plaintiff-executor taking out probate.⁽¹⁾

Probate is necessary in the case of Hindu Wills falling within Act XXI of 1870.

Probate is not necessary in the case of a Hindu or Mahomedan Will not falling within the Hindu Wills Act.

(t) In any case, a person who takes possession of the property of a deceased person without letters of administration, probate, or a certificate, constitutes himself representative of the deceased to the extent of the property he takes, and is bound to account for it in the same way as a duly constituted representative. Chowdry Wahed Ali v. Musmamut Jumae.⁽²⁾ "A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of the executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong."⁽³⁾

In any case person taking possession of a deceased's property without probate constitutes himself representative.

Person intermeddling with a deceased's property is executor of his own wrong.

"When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in a

Such executor is liable to the extent of assets that may have come to his hands.

(1) I. L. R., 8 Bom., 241. | (2) 11 B. L. R., p. 150.

(3) Sec. 265 of Act X of 1865.

When no formally constituted representative exists, person seeking to execute decree, must prove that he represents the deceased decree-holder, or that the person against whom he seeks to recover is legal representative of the deceased debtor.

Person taking possession of the estate of a deceased Hindu must be treated as his representative, and judgment obtained against him is not a nullity even though another person obtained after decree a probate as executor of the deceased.

due course of administration.”⁽¹⁾ Where a representative is appointed by the court, or when one takes possession of the property of a deceased person and so renders himself liable to the extent of the property he takes, the court can make the representative a party to the suit before decree under chapter XXI, or execute the decree in his favour under section 231, or against him under section 234. But where no such formally constituted representative exists, as may be the case in the instance of property of a Hindu, Mahomedan or Buddhist, or person exempted from the operation of the Indian Succession Act, and where no grant of probate or letters of administration has been made, the applicant for execution, must be prepared with evidence to make out his case if he claims to represent the deceased creditor, or to show that the person against whom he seeks to execute his decree is the legal representative of the debtor, and liable as such, or that having wasted or misapplied the property of the deceased, he is so far personally liable.

(u) In *Prosunno Chunder Bhuttacharjee v. Kristo Chytunno Pal*,⁽²⁾ the plaintiff, in 1871, had lent a certain sum of money to one Prankristo, who, prior to his death, lived with one Bibuty as his wife. The debtor died in 1872, and the said woman performed his funeral, and lived in his house, taking possession of his property. The plaintiff sued Bibuty as widow of the deceased and obtained a decree for money. When he proceeded to execute the decree against the property of the deceased, he found that it had all been transferred to Bibuty's brother, who, although he was a distant relation of the deceased, claimed the property attached under a will by which he alleged that the deceased had made him devisee of his whole property for Bibuty's maintenance, and performance of certain religious ceremonies, and subject thereto for his own benefit. Bibuty's brother obtained probate of the will after the decree and claimed the property under attachment and its release. Then plaintiff brought the

(1) Sec. 266 of Act X of 1865. | (2) I. L. R., 4 Cal., 242.

present suit to have it declared that the property in the hands of Bibuty's brother was liable to satisfy the decree obtained against Bibuty as representative of the deceased. The Lower Courts decreed the plaintiff's claim. In the second appeal, Markby, J., while confirming the decision, observes, "The executor does not represent the deceased by virtue of the will until he has obtained probate. Who, then, represents the deceased, who has left a will from his death until probate has been obtained? Surely some one must do so, or the law would not have provided that the Statute of Limitations should run between the death and the grant of probate as it undoubtedly does."

"The decisions of the Courts in India have been liberal in recognizing the acts of the *defacto* manager of a deceased's estate as valid. If Bibuty had actually paid the debt of the plaintiff, or if the plaintiff had actually seized and sold the property of the deceased whilst in her possession, and had received payment out of the proceeds, I do not think the executor could have recovered back either the money paid to the plaintiff or the property sold in execution."

Observations of Markby, J., on the effect of the judgment.

"Upon the whole, I think that, until some other claimant comes forward, the party who takes possession of the estate of a deceased Hindu must, in the present state of the law, be treated for some purposes as his representative, and that a judgment against such a representative is not a mere nullity. Even if it cannot be executed against the estate in the hands of the executor when he has taken out probate, it is at any rate sufficient to enable the plaintiff to bring a suit against the executor in order to have the decree satisfied."

Even if the decree cannot be executed against the estate in the hands of the executor it is sufficient to enable the decreeholder to sue the executor for the satisfaction of the debt.

18. When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

Effect of fraud.

or where any document necessary to establish

such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application,

(a) against the person guilty of the fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Definition of "fraud" and "misrepresentation" in the Indian Contract Act IX of 1872.

(a) The interpretation clause of the Limitation Act does not define fraud. Sections* 17 and 18 of the Indian Contract Act IX of 1872, define "fraud" and "misrepresentation." Fraud or no fraud is a question of fact.

* 17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :—

- (1).—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2).—The active concealment of a fact by one having knowledge or belief of the fact;
- (3).—A promise made without any intention of performing it;
- (4).—Any other act fitted to deceive;
- (5).—Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts, likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(a.) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) This section, which corresponds with section 19 of Act IX of 1871, includes also "applications" as well as "suits." In the second paragraph, the words "from him" are introduced, and consequently the document mentioned in that paragraph must have been fraudulently concealed from the "person having a right to institute a suit or make an application."

In order to apply this section, it is necessary that the suit should be by the plaintiff, or some one through whom he claims on whom the fraud has been practised,

- (1) "against the person guilty of the fraud or accessory thereto, or
- (2) against any person claiming through him otherwise than in good faith and for a valuable consideration."

(c) This section applies to three classes of cases.

This section applies to three classes of cases.

- (1).—Where the right to sue is concealed from the plaintiff by the fraud of the defendant.
- (2).—Where the title on which the right to sue is founded is so concealed.
- (3).—Where any document necessary to establish such right is so concealed.

(b.) *B* is *A*'s daughter and has just come of age. Here, the relation between the parties would make it *A*'s duty to tell *B* if the horse is unsound.

(c.) *B* says to *A*—"If you do not deny it, I shall assume that the horse is sound;" *A* says nothing. Here, *A*'s silence is equivalent to speech.

(d.) *A* and *B*, being traders, enter upon a contract. *A* has private information of a change in prices which would affect *B*'s willingness to proceed with the contract. *A* is not bound to inform *B*.

"Misrepresentation"

18. Misrepresentation means and includes—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;
- (3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

The English Limitation Act requires reasonable diligence also on the part of plaintiff.

Latham, J., has observed that diligence is also required of a plaintiff claiming benefit of this section. (May 1883.)

(d) The corresponding *Section of the English Statute expressly provides that in case of fraud, the right shall be deemed to accrue from the time at which such fraud shall be or with reasonable diligence might have been first known or discovered.

(e) In *Merwánji Hormusji v. Rustomji Burjorji*,⁽¹⁾ plaintiff, as heir of his father who died in December, 1872, without obtaining a formal dissolution of his partnership with the first defendant, sued the first defendant in July, 1880, claiming a moiety of a certain amount found to have been realized by him in 1878. It was alleged that the money realized consisted of Rs. 10,000 in cash in 1878, and Rs. 10,000 by a pro-note dated 1878, payable in 1881 for the claim of the firm which the first defendant assigned to the 2nd defendant in February, 1873. The plaintiff pleaded that he became aware of the assignment and the arrangement between the defendants in 1880, and claimed the benefit of this section. Latham, J., observes: "I cannot accede to this argument. I see nothing in plaintiff's evidence to show misrepresentation by the defendant. I am not going to attempt to define what fraud would suffice to satisfy that section, nor do I say that there may not be silence under such circumstances as itself to be fraud within its meaning, but I see none such here. Moreover, diligence is required of a

(1) I. L. R., 6 Bom., 628.

* The section of the English Statute is as follows.—That in every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at, and not before, the time at which such fraud shall or with reasonable diligence might have been first known or discovered, provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud, against any *bond fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who, at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed.

plaintiff who claims the benefit of that provision." *Willis v. Lord Howes*. (29 W. R., 70).

(f) In *Venkateswara Iyen v. Shekhari Varma*,⁽¹⁾ plaintiff alleged that a grant which he sought to set aside had been fraudulently concealed from him. The grant was dated 1851. The Privy Council held that the plaintiff should have stated what was the occasion of the discovery of the fraud, or the circumstances which led to it, and that the plaintiff had given no word of explanation of his extraordinary inaction.

P. C. found a plaintiff guilty of inaction and remarked he should have explained his conduct, implying thereby that diligence was necessary. (March 1880.)

(g) "In order to constitute a case of fraud, which in the contemplation of equity takes a case out of the operation of the Statute of Limitations, it is not sufficient that there should be merely a tortuous act unknown to the injured party, or enjoyment of property without title while the rightful owner is ignorant of his claims; there must be some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts. Taking coal tortuously from another's mine is not fraud, which will entitle the plaintiff to an account more than six years afterwards; but if the coal be taken intentionally, and steps be taken to prevent the plaintiff from discovering the wrong, this is a fraud which will take away the defendant's right to plead the statute. Where a testator having a sum of £100 owing to him from *G*, made a specific bequest of the debt to *E* on certain trusts, and after the testator's death *E* set off the amount against a private debt due from himself to *G*, *G*, having notice of the trusts, it was held that this was a fraudulent abstraction of the trust property by *E* and a fraudulent receipt and appropriation of it by *G* for his own personal benefit; relief against such a transaction being given on the ground of fraud, the remedy was not taken away by lapse of time, and *G*, the debtor, was ordered after the lapse of more than 20 years to refund the amount of the debt to the parties beneficially entitled. Where a guardian and devisee in trust obtained a conveyance at an undervalue from his

(English authority.) In order to constitute fraud, there must be abuse of confidential position, some intentional imposition or some deliberate concealment of facts.

Fraudulent transactions against which court would grant relief.

(1) I. L. R., 3 M., 399.

wards as soon as they obtained their majority, and where a reversionary grant at an undervalue was obtained from an expectant heir in distressed circumstances by an attorney, who had full knowledge of the value of the estate, and had considerable influence over the grantor, these were held fraudulent transactions against which the court would grant relief after more than 20 years." (Darby and Bosanquet, p. 193.)

Fraud must be committed by the party against whom right is sought to be enforced.

(h) In *Ramdoyal Khan v. Ajoodhia Ram Khan*,⁽¹⁾ plaintiff's ancestor had obtained, in 1817, from the Zemindar, a lease of a certain portion of his property. The Government, in 1837, sold the entire zemindari for arrears of revenue, purchased it in auction, and granted 20 years' lease thereof to one *W*. In 1842, the Government restored the estate to the Rajah Zemindar with all the prior incumbrances, but subject to the lease to *W*. In 1844, the plaintiff's father sued to recover possession of his tenure, and it was finally settled by the Privy Council that his right to sue could only arise on the expiry of the lease to *W*. In the meantime, owing to certain fraudulent transactions, one *A* got into possession of the estate as the purchaser of the interests of certain mortgagees of the Rajah, and the property was again sold for arrears of revenue, and was purchased by *M*, a party to the fraudulent transactions. The Rajah got the sale reversed in 1866 and obtained possession in 1871. The plaintiff, in October, 1873, sued the Rajah and his lessees, and alleged that, when the lease to *W* expired, the property was in the possession of *M*, of the fraudulent character of whose title they had no knowledge, and that his right to sue in the present case consequently arose only in 1871. The court observed that the corresponding section 19 of Act IX of 1871 was applicable only to those cases where the fraud was committed by the party against whom a right is sought to be enforced.

Plaintiff's ignorance of the accrual of his right, unless brought about

(i) *Azroal Sing v. Lalla Gopenath*⁽²⁾ was a suit to recover money paid by Government to the defendant

(1) I. L. R., 2 Calc., 1. | (2) 8 W. R., 23.

as compensation for land taken for public purposes which, the plaintiff alleged, to belong to him and not to the defendant. It was held that the plaintiff's right of action against the defendant accrued at the time when the defendant first took the money from Government, and that the ignorance of the plaintiff in regard to the accrual of his right did not prevent the time from running against his suit, unless it had been brought about by the fraud of the defendant.

by the defendant's fraud, will not prevent the time from running against him.

(j) "In this case, which also proceeded upon the fraudulent sale to McArthur, it was held by Markby and Birch, J. J., that where the allegations in a plaint sufficiently stated that the plaintiffs being entitled to property and being in enjoyment thereof were ousted therefrom under color of a fictitious revenue sale in pursuance of a fraudulent contract, the fraud being so contrived as to make plaintiffs believe that they had no right of action at all, and the allegations were proved, the fraud would entitle the plaintiffs to claim the benefit of section 9 of Act XIV of 1859."⁽¹⁾

Case where plaintiff was fraudulently made to believe he had no right to sue.

(k) A man is not at liberty to shut his eyes to information within his reach and so lengthen indefinitely the period of limitation within which he should make his claim; *Dhunput Sing v. Ruhoman*.⁽²⁾ In *Bibee Solomon v. Abdool*,⁽³⁾ it was held that although this section does not require due diligence on the part of a plaintiff, the court may from the existence of the means of knowledge of the fraud, find as a matter of fact that the plaintiff had actual knowledge of it. Wilful ignorance attaches to the party, the consequences of knowledge of fraud. In *Radhanath Dutt v. Govind Chunder*,⁽⁴⁾ the Judge observe, "where plaintiff had such information, a person of ordinary care and prudence would have acted on it to investigate the state of the accounts with Sreenath Doss, and, so acting, could have discovered the payment of the sum and the fact of its not having been accounted for. He cannot

From existence of means of knowledge of fraud, court may find actual knowledge on plaintiff's part.

(1) I. L. R., 2 Calc., 8.

(2) 9 W. R., 329.

(3) 8 C. L. R. 169, 184.

(4) 4 W. R., S. C. R., 19.

now say that he was not then cognizant of the fraud, when he might have been had he wished; and when, but for his own laches, the fraud must have become known to him, had he acted with ordinary diligence and precaution."

Case where fraud alleged was held not to exhibit concealment of cause of action within section 9 Act XIV of 1859.

(1) In *Bygnath Suhaye v. Brohmo Deo Narain*,⁽¹⁾ plaintiff sued to recover three items of landed property to which he made title by inheritance. It appeared by the evidence of the plaintiff himself that his father, through whom he claimed, was dispossessed of the property by his co-sharers in it so far back as 1242 F. S., and afterwards brought a suit for the same in which he was non-suited. One of the three items from that time had never come back to the possession of either the plaintiff or his father or any one in their behalf. As to the other two items, the defendant pleaded that they were restored to the plaintiff's mother, who, as guardian of the plaintiff when he was a minor, sold them to him, and that the plaintiff, after coming of age ratified the sale by a petition to the Collector, praying for mutation of names. The plaintiff totally denied ever having presented such a petition. The Lower Court found that the defendant's case on this point was a fraud. It was held that, even if the allegation of fraud were true, as it did not exhibit concealment of the cause of action within section 9, Act XIV of 1859, and the alleged fraud did not constitute an ingredient in plaintiff's cause of action, it could not get rid of the effect of time.

Plaintiff's right to sue for money which defendant received, representing he was agent of party entitled to the money, but did not pay, held to arise from discovery of fraud.

(m) In *Penuballi Subbaramareddi v. Bhimaraja Ramaya*,⁽²⁾ a vakil received money for his clients and gave it to their agent for delivery to them. The agent did not deliver it accordingly, and the vakil was compelled by the Civil Court to pay it over again. The vakil then sued the agent for money. It was held that if the defendant was in truth the plaintiff's agent, but had induced the plaintiff to pay the money to him by the fraudulent representation that he was agent of the clients, the cause of action would have arisen at the discovery of the frauds; but the case

(1) 9 W. R. 255.

| (2) 2 M. H. C. R., 21.

was treated to fall under clause 16, section 1, of Act XIV of 1859. If an agent receive money for his principal and conceal the fact from his principal, the agent is guilty of fraud, and cause of action to recover the money accrues to the principal from the date of the discovery of the fraud. *Hossain v. Syed Tussudduck*.⁽¹⁾

Agent conceal-
ing money he re-
ceived for his
principal.

(n) In *Gibbs v. Griedl*,⁽²⁾ plaintiff sued for damages, said to have resulted from fraudulent representations contained in the defendant's letter, memorandum, prospectus and balance sheet regarding a company which was established and registered in 1870. The plaintiff alleged that by reason of such false representation he was induced to purchase shares which were always worthless, and so he lost £25,000. The defendant alleged that the cause of action did not arise within six years prior to the suit. The plaintiff replied that he did not discover the fraud or that the defendant had been a party to it, and that he (plaintiff) could not, by the exercise of reasonable diligence have discovered, and had not the means of discovering the matters stated in his bill until within six years next before the commencement of the action, and that the means of discovering fraud had been concealed by the defendant. It was held, that the plaintiff's plea was good. Field, J., observes, "The making of the fraudulent representation complained of is, no doubt, the first step going to the existence of a cause of action: but the fraudulent representation does not of itself give a cause of action; damage to the plaintiff must ensue before that comes into existence. Moreover, fraud and damage only bring into existence a cause of action when the plaintiff elects to treat it as such, and seeks to avoid the transaction, which in no case can he of course do until he has discovered his right to elect, or has so omitted to make use of reasonable means at his command for making the discovery as to make it unjust not to treat the omission as equivalent to a discovery, and so to hold the plaintiff as having been put upon his election." In this case, Field, J., alludes

English case.
In a suit for
damages for
fraudulent re-
presentation,
that plaintiff
did not discover
and had not
reasonable
means of dis-
covering fraud
within time,
held good plea.

Observations of
Field, J.

Fraud and da-
mage only bring
into existence a
cause of action.

(1) 21 W. R., 245.

(2) 8 Q. B. D., 296.

Statute should not operate during the time that fraud is undiscovered.

to *Hovenden v. Lord Annesley*, (2 Sch. and Lep. 607, 629) in which Lord Redesdale is said to have stated the reasons for the decision of *Booth v. Lord Warrington* (4 Bro. P.C., 163). Field, J., states "he said that the principle of that case was that fraud is a secret thing, and may remain undiscovered until such time that the statute might run, but during that time the statute should not operate, because until discovery the title to avoid the transaction does not arise."

The Law of Limitation being express, dishonesty in obtaining possession will not prevent the possessor from availing himself of the Law of Limitation.

(o) In *Kowar Poresh Narain Roy v. Watson and Co.*,⁽¹⁾ the court observe, "if they took possession of land which they knew did not belong to them, they took (as the Civil Law calls it) a knavish possession. Speaking of possession and prescription, the Civil Law says: 'To acquire prescription, it is necessary to have possessed honestly and fairly, i. e., that the possessor must have been persuaded that he had a just cause of possession, and must have been ignorant that what he possessed did belong to another person. And this integrity is always presumed in every possessor, if it is not proved that he has possessed with bad conscience, knowing the thing to be another's.' (Domat's Civil Law, 2208, p 876). I do not mean to say that the fact of obtaining possession dishonestly or knavishly will prevent a man from availing himself of an express Law of Limitation. On the contrary, it appears from a note in the same book that it will not. (Idem, 2209). The Law of Limitation in this country being express, dishonesty in obtaining possession will not prevent the possessor from availing himself of the provisions of that law. But the law cannot relieve him from the charge of dishonesty. In the same note it is said: 'But as to the point of conscience, it is most certain that the length of time does not secure unjust possessors from the guilt of sin, and that, on the contrary, their long possession is only a continuation of their injustice.' "

(1) 5. W. R., 288.

(p) When a sale of land subject to the right of pre-emption is made without previous notice to the pre-emptor, if the vendor and vendee intentionally conceal the fact of sale, the pre-emptor is kept from the knowledge of his right to sue by a fraud, of which the vendor and vendee were alike guilty; but the mere omission by a vendor to give due notice to a pre-emptor of a proposed sale is not a fraud even if the omission is intentional. *Murad v. Bhag Singh* (Punj. Rec., No. 46 of 1879). See also *Ram Dyal v. Beli Ram* (Ib., No. 29 of 1878). It was again held in a suit for pre-emption, that the fact that the sale was not notified was not sufficient to establish fraud within the meaning of this section. It must be shown that there was an industrious and artful concealment of the fact of sale, and the facts must necessarily lead to the inference that there was a design to keep the pre-emptors in the dark. *Arsala v. Yar Muhammad* (Punj. Rec. No. 32 of 1881.)⁽¹⁾

Vendor's intentional failure to inform pre-emptor, of proposed sale, is not fraud. But intentional concealment of sale by vendor and vendee is fraud.

It must be shewn that there was an artful concealment of the fact of sale.

(q) In *Mungamuru Ananta Lakshminarasu Pantalu v. Srimant Raja Yarlagedda Ankavid Bahadur*,⁽²⁾ plaintiff sued for money upon two documents, dated August, 1851, which had been wrongfully extorted by illegal pressure from the bailee and which the plaintiff recovered by a decree of court. With reference to the words "if any document necessary, &c.," in section 9 of Act XIV of 1859, the court observe: "It seems to us that the preceding words of the section show clearly that the documents must have been fraudulently concealed from the knowledge of the plaintiff; he must, through the fraudulent concealment, be unaware of its existence, and, when this is so, the statute runs against the person guilty of the fraudulent concealment, or accessory thereto, from the time at which plaintiff had the means of producing, or compelling its production, if it is a document necessary for establishing such right of action." "In one sense every document may be said to be necessary, if the word necessary is to mean anything which it would be more prudent to be provided with." "But the documents in

Case where it was held document not "necessary" and not "fraudulently concealed" within section 9 of Act XIV of 1859. (March 1870)

(1) *Bevaz's Limitation Act*, p. 51. | (2) 7 Mad., H. C. R., 22.

Cases in which document would be necessary.

Where plaintiff was unable to obtain a copy of the defendant's report as consal to his government, which contained a defamatory statement, plaintiff was refused benefit of section 9 of Act XIV of 1859, though it appeared, defendant eluded plaintiff's enquiry to know the precise character of the defamation.

Time for Collector's application to cancel sale illegal under Bombay Act V of 1862, runs from the date of knowledge if Limitation Act applied.

the present case do not seem in themselves, and still less upon the facts of the case, to be necessary within the meaning of the section." "It is easy to put cases in which the document would be necessary, as in the case of a will, or a codicil fraudulently concealed from the knowledge of the legatee."

(r) In *Robert and Charriol v. Lombard*,⁽¹⁾ the defendant, in his official report to the Minister of Marine in France, had made a defamatory libel concerning the plaintiff who, knowing of the matter shortly after, applied to the defendant for a copy, which was refused. The plaintiff, however, obtained a copy from the French Minister and instituted his suit for defamation within one year from the date of his having obtained the copy, but after one year from the date of the original publication. The plaintiff had used every endeavour to obtain a copy of the report, but the defendant had successfully eluded the enquiry. It was decided that the conduct of the defendant did not amount to fraud so as to enable the plaintiff to claim the benefit of the corresponding section 9 of Act XIV of 1859. Phear, J., was of opinion, that, if it was shown that the defendant had concealed the letter with the object of having the plaintiff's claim barred, the conduct of the defendant might be held fraudulent. The Judge thought that the words "document necessary," &c., in the second clause of this section, hardly applied to a document which was merely useful in evidence.

(s) In execution of a decree, the judgment-debtor's recognised fourth share in a certain bhag was sold in February, 1876, and the purchaser was subsequently put in possession of a portion on the 30th September, 1880. The Collector applied to the court to set aside the sale, on the ground that it was illegal under Bombay Act V of 1862. It appeared that the Collector did not know till November, 1877, that the land sold was an unrecognised portion of the bhag and not the whole of it. It was held that the sale might be set aside under section 2 of Bombay Act V of

(1) 1 Ind. Jur. N. S., 192.

1862, notwithstanding its confirmation and delivery of possession, and that even if this Limitation Act applied to the case, time ran against the Collector only from November, 1877. The Collector of Broach *v.* Rājā' Ram' Laldās.⁽¹⁾

(t) In the Collector of Broach *v.* Desai Raghunāth,⁽²⁾ it was held, that the law of limitation does not apply to Collector's application under the Bombay Act V of 1862, to set aside court sales of portions of a bhag.

Limitation Act, does not apply to such cases

(u) "In the case of property purchased *bond fide* for valuable consideration from a party who had acquired it by a concealed fraud, adverse possession as against such purchaser commences from the time that the party entitled was deprived of the property by means of such fraud. The purchaser, from a trustee or mortgagee, may by due diligence discover the nature of the interest under which the seller has occupied, but the purchaser of property from a person who has acquired it by a concealed fraud can have no reason to suspect any defect in the title of the seller. This is why the Indian Limitation Acts do not place such a purchaser in the same category with purchasers from trustees, mortgagees and depositaries."

Possession of a *bond fide* purchaser in cases of concealed fraud.

"See the special report of the Indian Law Commissioners, dated 26th February, 1842. Sir James Colville, in his amended Bill, proposed that the possession of the purchaser should be deemed adverse from the date of the purchase, but he withdrew the proposition afterwards."⁽³⁾

(v) In Chetham *v.* Hoare,⁽⁴⁾ the plaintiff sued to recover property to which his predecessor, as he alleged, became entitled in the year 1769, and insisted that a register book containing a certificate of marriage, forming the principal link in his title, had been fraudulently mutilated in order to prevent him or his ancestors from obtaining evidence of the marriage. Malins, V. C., held upon demurrer, that by reasonable diligence, evidence of the marriage might have been ascertained within 20 years after the alleged fraud had been committed, and

Malins, V. C., refused benefit of the section of the English Act, holding that plaintiff, with proper diligence, could have discovered earlier the alleged fraudulent mutilation of marriage register book.

(1) I. L. R., 7 Bom., 542. | (3) Mitra's Limitation Act, pp. 164—165.

(2) I. L. R., 7 Bom., 546. | (4) L. R., 9 Eq., 571.

that the plaintiff had not brought his case within the 26th section of the Statute of Limitations.

Case where father and mother, by paying off an illegitimate son as the eldest legitimate son, defrauded plaintiff of his inheritance, and time was held to run from the discovery of the fraud.
A more direct and a more positive fraud can hardly be conceived.

(W) In *Vane v. Vane*,⁽¹⁾ the plaintiff, by his bill, stated to the following effect; that an estate being limited to the plaintiff's father for life, remainder to his first and other sons successively in tail, the father in 1797 intermarried with a woman who had been his mistress, and had just borne him a son; that after the marriage the parents agreed to pass off the son as legitimate, and he was always recognized as such; that the plaintiff, who was born ten years afterwards, was the eldest, but was brought up in the belief that he was the second legitimate son; that when the illegitimate son came of age, he was informed by the father that he was illegitimate, and with that knowledge joined the father in suffering a recovery to bar the entail; that on the marriage of the illegitimate son in 1823, he and the father made an ante-nuptial settlement of the estates, which was negotiated by the wife's father, as her agent, and on her behalf, with full knowledge that the husband was illegitimate; that the father died in 1832, upon which the illegitimate son entered into possession, and remained so till his death in 1842, ever since which time his eldest son had been in possession; that the plaintiff had never until 1866 believed or suspected, or had any reason to believe or suspect, that his elder brother was illegitimate; and the bill prayed for a declaration that the plaintiff was entitled to the estates, and that the defendants, who claimed under the settlement of 1823, might be ordered to give up possession to him. The defendants demurred. It was held that a Court of Equity had jurisdiction, and that the designedly bringing up the plaintiff in the belief that he was the second legitimate son was a case of concealed fraud within the meaning of the Statute of Limitations (3 and 4, Will 4, c. 27, s. 26), and that time did not begin to run against the plaintiff's right to sue in equity until the time when he might first, with reasonable diligence, have discovered the fraud.

(1) *Law Rep.*, 8 Ch., 383.

(X) "It was contended by the Solicitor-General that the only person protected was a *bond fide* purchaser, and that we ought, on the authority of Lord *Hardwicke*, to hold that a person is not a *bond fide* purchaser whose agent was affected with notice of that which should have prevented his purchasing. In this proviso, however, we think that the words "*bond fide*" were introduced altogether for a different purpose, and with a different meaning, that it was meant that the purchaser should be really a purchaser, and not merely a donee taking a gift under the form of a purchase. For example, a person might take an assignment of a leasehold in consideration of covenants to pay the rent and perform all the covenants—might take a conveyance of a mortgaged estate in consideration of his paying off the mortgage. These might be *bond fide* purchasers, or they might, according to the facts, be in truth and substance volunteers receiving a gift of a valuable chattel real or a valuable estate incumbered. It would be easy to suggest many other circumstances by which it might be shewn that an apparent purchaser had not entered into the transaction honestly and substantially as a purchaser, but in some other character, or for some indirect purpose. And we conceive that it was with reference to that class of cases the words "*bond fide*" were introduced here, and that they were not meant to include and cover all, and more than all, that is afterwards expressed in the remainder of the proviso. What, then, is the legal meaning and effect of that which is so afterwards expressed? At the time this statute was passed it had undoubtedly been held by the highest authority that the actual knowledge of the agent through whom an estate is acquired is in this court equivalent to the actual personal knowledge of the principal. This is also in accordance with the invariable course of decision at Common Law in regard to purchases of chattels. No one dealing through an agent is ever permitted to allege himself ignorant of that which is actually communicated to the agent in the course of the transaction. The agent in the matter, and

Bond fide purchaser means real purchaser and not one taking a gift under the form of a purchase.

At the time that the English Statute was passed, it had been held by the highest authority that the actual knowledge of the agent through whom an estate is acquired is equivalent to the personal knowledge of the principal.

in the course of the transaction acting within the limits of his agency, is the *alter ego* of the principal."

(y) "It appears to us beyond all question that, as the law of this court stood when the statute was passed, the knowledge of the purchaser's agent acquired in the course of the transaction was for all purposes treated as the knowledge of the principal. It is also, we conceive, beyond question that in every other case, except under this section, this court would treat the knowledge of the purchaser's agent as the knowledge of the purchaser. Was it then meant to make such a material alteration of the law? It is said in support of that (and not without force) that the words well-known in this court, "purchaser for valuable consideration without notice," were designedly not used, and that the words "who had not participated in the fraud, and did not know, and had no reason to believe," were designedly introduced, so that only those purchasers should be affected who had actual knowledge, and who were in truth making themselves morally accomplices in the fraud—in fact, receivers of stolen goods."

The Legislature, by the alteration, meant to exclude constructive notice which had been carried to a very startling extent.

(z) "But we think that what the Legislature really meant to do was to exclude that constructive notice which had certainly been carried to a very startling extent in many instances, and that it did not mean to subvert, in respect of one small portion of the law of this court, the well-settled principles and rules on which all the courts have acted in respect of the relation of principal and agent, and in respect of the extent to which the knowledge of the latter is deemed to be the knowledge of the former. The courts had, in fact, held, almost in so many words, that what the agent knows the principal knows, that the knowledge of the agent was sufficient to create *mala fides* in the principal; and we think it therefore reasonable to hold that the Legislature used the words in the same sense, and that when they said 'who did not know or had not reason to believe,' they meant 'who did not know or had not reason to believe, either by himself or by some agent, whose knowledge or reason to believe is by settled

The word "who did not know" or "had not reason to believe" were intended to mean "who did not know" either by himself or by some agent whose knowledge is, by settled law, deemed to be his. If actual personal know-

law deemed and taken to be his.' We think it would lead to very startling consequences if any other interpretation were put on the clause. It is obvious that if actual personal knowledge were required, every Corporation or Joint-Stock Company might acquire a good title to property, although its officers and solicitors were perfectly conversant with the grossest fraud perpetrated by the vendor; and in fact any person might deal with impunity in the purchase of what is in substance stolen property, provided he takes care to leave the whole dealing from first to last in the hands of his agent."

ledge is required, every corporation might acquire good title to property though its solicitors were conversant with the grossest fraud committed by the vendor.

Any person might deal with impunity in the purchase of stolen property by leaving the matter in the hands of his agent.

Effect of acknowledgment in writing.

19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to

enjoy, or is coupled with a claim to a set off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section “signed” means signed either personally or by an agent duly authorized in this behalf.

This section applies to acknowledgment of liability in respect of *any property or right*, while sec. 30 of Act IX of 1871 referred to acknowledgment of a *debt or legacy* only.

(a) The corresponding section 20 of Act IX of 1871, referred only to acknowledgment in respect of a *debt or legacy*, while Article 148 of the second schedule provided for the acknowledgment by a mortgagee of the mortgagor's title giving a fresh starting point. This section (19) of the Act of 1877 has been so altered as to apply to acknowledgment of liability in respect of “*any property or right*.” The acknowledgment of a mortgagor's title, therefore, comes under this section.

As to the effect of an acknowledgment by one of several joint contractors, partners, executors or mortgagees, see section 21.

Under section 4 of Act, XIV of 1859, acknowledgment made after the period of limitation revived a debt.

(b) The corresponding section 4 of Act XIV of 1859, did not say that the promise to pay must be made before the period of limitation had expired. By that Act, therefore, a debt barred by limitation could be revived by a promise to pay the debt made after the period of limitation had passed, and such a promise could be sued on. That section has been split up into the Limitation Act of 1871, section 20-A, and into the Contract Act, section 25, clause 3. Section 20-A of Act IX of 1871, makes it compulsory that the promise should be made before the period of limitation had expired, and that period is extended by the Contract Act, section 25, clause 3, which lays down that a written promise to pay a debt barred by limitation is not a void agreement, but is a contract enforceable in law. In *Heera Lall Mookhopadhyaya v. Dhunput Singh*,⁽¹⁾ which was a suit upon kist-bundi, or an agreement to pay by monthly instalments the debt secured by a decree of court, the defendant contended that, on the date of the

That section is split into section 20 of Act IX of 1871 and section 25 clause 3 of the Contract Act.

C. H. held that a kist-bundi executed for money due under a barred decree is not void.

(1) I. L. R., 4 Calc., 500.

agreement, as the decree had been barred, there was no valid consideration for the agreement. The court, while holding that the decree had not been then barred, observed, in December, 1878, that even had there been no valid consideration for the kist-bundi, yet the principle laid down in section 25, clause 3 of Act IX, 1872, and which prevailed before the passing of that Act, would have saved the kist-bundi from becoming void for want of consideration. In *Tillak Chand Hindumal v. Jitemal Sudaram*,⁽¹⁾ the court observe, that the efficacy of such promises is now based upon the principle, that where the consideration was originally beneficial to the party promising, and he be protected from liability by some provision of the Statute or Common Law, for his advantage, he may renounce the benefit of that law, and if he promise to pay the debt, he is bound by the law to perform that promise. This has been followed in *Raghoji v. Abdul Karim*,⁽²⁾ and *Chatur Jagai v. Tulsi*.⁽³⁾ See also *Mullins Beddy*.⁽⁴⁾

The principle of clause 3 section 25, prevailed even before the Contract Act was passed.

B. H. Debtor might renounce the benefit of the Statute of Limitation, and promise to pay a barred debt.

Observations of Wigram, V. C., on the legal effect of an acknowledgment of a barred debt.

(c) "The legal effect of an acknowledgment of a debt barred by the Statute of Limitations is that of a promise to pay the old debt, and for this purpose the old debt is a consideration in law. In that sense and for that purpose the old debt may be said to be revived. It is revived as a consideration for a new promise. But the new promise and not the old debt is the measure of the creditor's right. If a debtor simply acknowledges an old debt, the law implies from that simple acknowledgment a promise to pay it, for which promise the old debt is a sufficient consideration. But if the debtor promises to pay the old debt when he is able, or by instalments, or in two years, or out of a particular fund, the creditor can claim nothing more than the promise gives him." *Phillips v. Phillips* (3 Ha., 281, 300).⁽⁵⁾

(d) In *Shambhu Nath Nath v. Ram Chandra Shaha*,⁽⁶⁾ plaintiff claimed money due on a balance of accounts, alleging that the defendant had given a written acknow-

"Oral evidence of the contents of an acknowledgment shall not be received" held not to override the general rule as to the production of secondary evidence.

(1) 10 Bom., H. C. R., 206.

(2) I. L. R., 1 Bom., 590.

(3) I. L. R., 2 Bom., 230.

(4) 6 N.-W. P. H. C., p. 150.

(5) Banning, p. 48.

(6) I. L. R., 12 Calc., 267.

ledgment of the debt. As the acknowledgment, which was the only means of avoiding limitation, was said to have been lost, the Munsiff dismissed the suit, on the ground that secondary evidence of its contents could not be received. The Sub-judge decreed the claim, being of opinion that the words in para. 2 of this section had not the effect of overriding the rule of evidence as to the production of secondary evidence in the case of a document lost or destroyed. The corresponding section of Act IX of 1871, distinctly provided against the reception of oral evidence of the contents of a written acknowledgment, lost or destroyed. Act IX of 1871 was passed before the present evidence Act came into existence, and the above provision had not the effect of excluding secondary evidence of an acknowledgment in the possession of the opposite party or beyond the jurisdiction of the court or of one contained in a public document. Section 65 of the Evidence Act gives the various cases in which secondary evidence may be given. Then came the Limitation Act of 1877. The words of para. 2 refer to oral evidence, but not to secondary evidence. It was held that para. 2 of this section belongs to that branch of the law of evidence which is dealt with by section 91 of Act I of 1872, and ought not to be read in derogation of the general rules of secondary evidence so as to exclude oral evidence of the contents of an acknowledgment which has been lost or destroyed. The court observe, "There is nothing in the terms of the Act constraining us so to hold, and the consequences of doing so would be serious. If we interpret section 19 of the Limitation Act as excluding secondary evidence, when the original document is lost or destroyed, it must also exclude secondary evidence of the contents of a document in every one of the cases mentioned in section 65 of the Evidence Act. For example, the party objecting to secondary evidence may have the original in his pocket, and when called upon to produce it, may pertinaciously refuse to do so. If secondary evidence cannot be given, justice will be frustrated. So again an acknowledgment may be in the form of a public record,

Para. 2 refers to oral evidence, but not to secondary evidence.

The consequence of interpreting this section to exclude secondary evidence of a lost acknowledgment would be serious.

An acknowledgment may be in the form of a

as was apparently the case in *Daia Chand v. Sarfraz*⁽¹⁾ or the document may be out of the jurisdiction and control of the court."

public record, or out of court's control and jurisdiction.

(e) "It would seem that if there is no date on the written acknowledgment, it may be supplied by parol evidence. This, in one report of *Edmonds v. Downes*, (2 Cr. & M., 463) is given as a direct decision, but in another report of the same case (4 Tyr, 179) it appears to have been left in doubt, though, even according to that report, the inclination of opinion of Bayley, B., was in favor of this view. And it is submitted that the name of the creditor, if not mentioned in the acknowledgment, may be supplied in the same way. (See *Hartley v. Wharton*, 11 Ad. & Ell., 934). If it is not clear from the acknowledgment itself to what debt it refers, this also may be proved (*Spickernell v. Hotham*, Kay, 669) by parol, and if it is lost parol evidence of its contents is admissible. (*Haydon v. Williams*, 7 Bing, 163)." (*Darby and Bosanquet*, p. 61.)

English cases on parol evidence allowed to prove date of written acknowledgment,

the name of creditor,

the debt to which payment referred, and

contents of a lost acknowledgment.

(f) In *Luvar Chunilal Ichharam v. Luvar Tribhovan Laldas*,⁽²⁾ plaintiff sued on the 22nd September, 1877, for money paid on the 16th November, 1868, for the defendant's use. The plaintiff relied upon two acknowledgments of the claim, dated 3rd November, 1872, and 11th November, 1874, and signed by the defendant's agent. It was pleaded that plaintiff had six years under Act 14 of 1859, and that the first acknowledgment was within that time. It was held that the expression "prescribed period" in section 20-A of Act IX of 1871, meant the period prescribed by Article 59 of schedule 2 of that Act, namely, 3 years from the period when the money was paid, and that, as the first acknowledgment was not so made, the claim was barred.

B. H. construed "prescribed period" in section 20 of Act IX of 1871 to mean period prescribed by that Act.

(g) In *Mohesh Lal v. Busunt Kumaree*,⁽³⁾ it was held that acknowledgments which under Act XIV of 1859 were insufficient to keep alive a cause of action, because

Acknowledgment of debt given before IX of 1871, and sufficient under it, but not so under XIV of 1859, held sufficient to save the claim.

(1) I. L. R., 1 All., 117. | (2) I. L. R., 5 Bom., 688.

(3) I. L. R., 6 Calc., 340.

Under section 20 of Act IX of 1871, agent may sign either his name or his principal's name.

It matters not in what form the instrument is.

Under the Statute of Frauds auctioneer's clerk writing purchaser's name binds the latter.

Drawer's letter to drawee after dishonor to pay money, is sufficient acknowledgment.

Acknowledgment of debt due would not revive a barred right to sue.

they were signed duly by an agent, were sufficient to sustain a suit on the same cause of action under Act IX of 1871, and that where a series of acknowledgments of a debt have been made, each within 3 years of the one next preceding, and the first of the series has been made within three years of the date on which the debt was contracted, a suit for the recovery thereof is, under Act IX of 1871, in time, if instituted within 3 years from the date of the last acknowledgment. In this case, letters written to the plaintiff by the debtor's Dewan, whose ordinary duty was to carry on a correspondence of that kind, were considered as written by the Dewan as debtor's agent generally authorised for that purpose. It is further observed that as long as the acknowledgment is signed with the principal's name by his duly authorized agent in such a way as to make it appear that the acknowledgment is his, and that he is the real author of it, it matters not in what form the instrument is. If the agent is authorized to write the letter, it matters not whether he signs the name of the principal or his own. Under the 17th section of the Statute of Frauds, an auctioneer's clerk writing the purchaser's name at his instance as such was sufficient signature to bind the purchaser.

(h) *Raman v. Vairavan*⁽¹⁾ was a suit brought by a creditor to recover money due to him, for which the debtor had drawn a hundi on a third person, who dishonored it. It was held, that a letter written subsequently by the debtor to the drawee of the hundi requesting him to pay the amount due upon it, was sufficient acknowledgment of the debtor's liability for the debt.

(i) In *Nahani Bai v. Nathu Bhan*,⁽²⁾ a sum of money was deposited with the defendant's firm in 1857. Three years afterwards interest was paid by the firm, which was debited in the ledger to the creditor against a credit of a like amount. In 1875, a balance was struck and carried to another account signed by the defendant acknowledging the same to be "due for balance of old account."

(1) I. L. R., 7 Mad., 392. | (2) I. L. R., 7 Bom., 414.

In 1878 the account was again balanced, and the balance again transferred to a fresh account similarly signed. It was held that although, after the acknowledgment in 1875, the account was again balanced in 1878, and an acknowledgment of a sum due was repeated, the latter could not revive the right to sue, which the acknowledgment of 1875 had not revived. The court further held that this could not be treated as an account stated. The court observes with reference to the acknowledgment, "We should have under section 19 of the Act, an acknowledgment ineffectual to bar limitation, because not made within the prescribed period, while one of exactly the same character might be made under Article 64 of schedule II at any time whatever, and would bar limitation, because no time is prescribed within which an account must be stated. The Legislature cannot have intended to lay down rules which would be self-contradictory, or have meant by Article 64 to defeat its own purpose in section 19. We must see if a reasonable construction cannot be found, which will give a distinct operation to each of the two rules, and an operation that will obviate clashing and inconsistency."

Acknowledgment ineffectual under this section would not be effectual in any case.

(j) In *Hemchand Kuber v. Vohora Raji Haji*,⁽¹⁾ a balance of account was written by a person at the request of an illiterate debtor in the debtor's name, and signed by the writer in his own name. It was held, that as the defendant could not write he got the acknowledgment including his name written by a third party and thus made that third party his agent, and that therefore he was bound by the acknowledgment.

Balance of account written in debtor's name, but signed by writer in his own name, is within explanation 2.

(k) In *Mahalakshmi Bai v. The Firm of Nageshwar Purshotam*,⁽²⁾ plaintiff deposited with the defendant Rupees 50 in December, 1876, and again Rupees 30 in December, 1877. In February, 1881, the defendant credited the plaintiff in his ledger with the sum due to him including interest. The defendant credited the plaintiff with interest yearly from the time of the deposit in his interest book. The Subordinate Judge held that the entries

Entry in debtor's book does not amount to an acknowledgment, unless communicated to his creditor or some one on his behalf.

(1) I. L. R., 7 Bom., 515. | (2) I. L. R., 10 Bom., 71.

written by the defendant were not acknowledgments contemplated in this section. It was held, on a reference, that an entry in a debtor's own book does not amount to an acknowledgment within the meaning of section 19, unless communicated to his creditor or to some one on his behalf, explanation 1 to this section showing that the acknowledgment is contemplated as "addressed" to the creditor, and that every acknowledgment, in order to create a new period of limitation, must be signed by the debtor or some one deputed by him, no matter in what part of the document the signature is placed.

Debtor writing accounts stated with his name at the top, held to be sufficient acknowledgment.

(1) In *Andarji Kalyanji v. Dulabh Jeevan*,⁽¹⁾ an account stated was written by a debtor himself with his name at the top of the entry. Westropp, C. J., held, that the account stated had been sufficiently signed within the meaning of section 4 of Act XIV of 1859, and that the signature was in one of the modes of signing most generally practised by natives. Following the above ruling and the ruling of the Madras High Court in *Khwaja Muhammad Janula v. Vencatarayar* and another,⁽²⁾ it was held, in *Jekisan Bapuji v. Bhowsar Bhogajetha*,⁽³⁾ that where the whole of an account stated was written by the debtor himself with the introduction of his name at the top of the entry, the account stated was sufficiently signed within the meaning of section 19 of Act XV of 1877.

Agent authorised writing letter in his principal's name to creditor, is an acknowledgment though not signed.

(m) In *Mathura Doss v. Bahu Lal*,⁽⁴⁾ the debtor's agent, under the orders of the debtor, wrote a letter to the creditor containing an acknowledgment in respect of a debt. This letter was headed as follows: "written by Babu Lal to Shah Benarsi Doss," the concluding portion of the letter was written by the debtor in his own hand-writing. The debtor admitted that the letter was written by his directions. It was held that the admission of the debtor, that the letter was written by his gumastah under his orders, and the circumstance that he added a paragraph at the conclusion, were sufficient evidence that the heading was

(1) I. L. R., 5 Bom., 88.

(2) 2 Mad., H. C. R., 79.

(3) I. L. R., 5 Bom., 89.

(4) I. L. R., 1 All., 683.

written by the duly authorised agent, and that whenever the maker of an instrument or his agent acting with authority introduces the name of the maker with a view to authenticate the instrument as the instrument of the maker, such an introduction of the name is a sufficient signature.

(n) In *Laljee Sahoo v. Raghoonundun Lal Sahoo*,⁽¹⁾ the disputes between the parties which were unsettled until the 23rd November, 1873, were referred to arbitrators who never held regular meetings, but on the 24th December, 1874, an *Ikrarnama* was executed by the defendant and his deceased father in which the sums due were said to have been ascertained. The plaintiff sued on the 21st December, 1877, on the *Ikrarnama*. Garth, C. J., observes "It may be then said, that the plaintiff, by never openly assenting to the amount of the debt thus acknowledged to be due to him by the defendant, has placed it out of his power to take advantage of it now; but we think that he has a right to take advantage of it at any time, so long as the acknowledgment of the debt remains uncontradicted and unexplained by the defendant. Assuming that the execution of the *Ikrarnama* was unknown in the first instance to the plaintiff, still if he afterwards became aware of it, and communicated to the defendant, as he did at any rate by bringing this suit, that he had assented to the adjustment, unless the defendant repudiated or explained away the admission that he had made, we consider that the plaintiff is entitled to take advantage of that admission in this suit."

Uncontradicted acknowledgment of debtor not openly admitted by creditor, is an acknowledgment within the meaning of this section.

(o) In *Young v. Mangala Pilly Ramaiya*,⁽²⁾ it was held, that an admission of a debt with the appended averment that it is not yet payable in point of time, may be an acknowledgment of a debt under section 4 of Act XIV of 1859. An assertion that a sum of money will be payable on the happening of an event future and uncertain is not an acknowledgment of a debt, but the allegation of incidents out of which a debt may at sometime arise. The court observe, "it is clear that this is no acknowledgment

Statement that a debt will become payable on the happening of a future event is not an acknowledgment of debt. (June 1861.)

(1) I. L. R., 6 Cal., 447. | (2) 3 M. H. R., 308.

of a debt, but of a transaction which would give rise to a debt, on the performance of a condition. There may be a present debt although there is not a present liability to pay, but there is no debt where the liability is dependent upon a condition."

Unregistered instrument compulsorily registrable, admitted to prove acknowledgment of debt to bar limitation. (Under Act IX of 1871)

(p) *Nundo Kishore Lall v. Musst Ramsookhee Kooer*⁽¹⁾ was brought for the recovery of money due under a registered bond, dated 30th February, 1868. This suit was brought in November, 1876. The principal objection taken by the defendant was, that the suit was barred by limitation. It was alleged by the plaintiff that there was an agreement between him and the defendant's husband to pay off the debt due under the plaint bond by the sale to him of his property, and that the terms of the agreement were reduced to writing and signed by the defendant's husband in 1875. The agreement was not registered. It was held that although under section 49 of Act VIII of 1871 no instrument required by section 17 to be registered can be received in evidence of any transaction affecting the property, that section does not prevent such instrument being used in evidence to prove an acknowledgment of some other debt therein contained, for the purpose of showing that a fresh period of limitation has been acquired under section 20, clause c of Act IX of 1871.

Case where an unregistered mortgage-deed containing acknowledgment of old debt held not to avail, as it was made the basis of the suit.

(q) Where plaintiff sued for the money due on an unregistered mortgage-deed, in which defendant recited that he owed plaintiff Rs. 199-8-0 on a balance of account, as security for which he mortgaged his land, stipulating for the payment of interest, &c., and it was contended for the plaintiff that the mortgage-deed, though unregistered and inadmissible in evidence to affect the land mortgaged, could be accepted as an acknowledgment of a subsisting liability, so as to prevent a suit for the original debt being barred by limitation, it was held, that as plaintiff had not sued on the old accounts, and offered the bond as proof of acknowledgment, but had sued to enforce the bond, the suit must fail, as there was no agreement in the bond sued

(1) I. L. R., 5 Cal., 215.

upon which could be separated from the mortgage. *Chuhar v. Wazira*, (Punj : Rec : No. 17 of 1881.)⁽¹⁾

(r) *Faki v. Khotu*,⁽²⁾ was a suit for possession of real property of more than hundred rupees value. The plaintiff, to prove that the defendant's possession was not hostile, produced an unregistered receipt granted by the defendant within 12 years preceding the suit. The receipt also contained an admission or acknowledgment of the plaintiff's title to the land. It was held that the document was inadmissible in evidence as such acknowledgment, as, if admitted, it would operate to declare a right, title, and interest in immoveable property of a higher value than one-hundred rupees. Used as evidence of title, the court observed, (and this is the only use which can be made of it under the old Limitation Act), such a document indirectly prevents the extinction of that title through the operation of the Law of Limitation. Under the new Limitation Act (XV of 1877) it would directly produce the same effect, for by section 19 of that Act it would create a new period of limitation from the date of the acknowledgment.

Unregistered rent receipt containing acknowledgment of title to land is inadmissible to prove that defendant's possession is not hostile.

(s) In *Kanhaya Lal v. Stowell*,⁽³⁾ plaintiff sold and delivered certain goods to the defendant. The defendant gave the plaintiff, in respect of the price of such goods, the following instrument: "Agra, 14th November, 1877. Due to K, cloth merchant, the sum of Rupees 200 only to be paid next January, 1878." This instrument was stamped with a one-anna adhesive stamp. The plaintiff claimed in the present suit from the defendant Rupees 200, and interest on that amount at 12 per cent. per annum from the 14th November, 1877, to the date of suit. It was held that although such instrument was not admissible in evidence as a promissory-note, as it was insufficiently stamped, it was nevertheless admissible as proof of an acknowledgment of such debt.

Insufficiently stamped promissory-note accepted as acknowledgment of debt.

(t) In *Khushalo v. Bahari Lal*,⁽⁴⁾ the debtor having

Acknowledgment of debt in an unregistered conveyance will bar the statute.

(1) Rivas's Limitation Act, p. 59.
(2) I. L. R., 4 Bom., 599.

(3) I. L. R., 3 All., 581.
(4) I. L. R., 3 All., 523.

owed a balance of Rs. 3,500, on adjustment of mutual open account on the 19th November, 1876, executed a conveyance of his property on the 11th December, 1876, for which the balance was partly the consideration. In the conveyance, the debtor acknowledged his liability for the balance. He died before the conveyance was registered and it did not operate. On the 18th November, 1879, the creditor sued the debtor's widow for the debt. It was held, that the acknowledgment in the unregistered conveyance saved the debt from the statute.

Rusu or adjustment of account can operate either as acknowledgment or as evidence of a new contract.

(u) In *Ramji v. Dharma*,⁽¹⁾ plaintiff sued on the 29th March, 1879, for money due on an account adjusted on the 26th February, 1879. The original account contained an item of Rs. 100 advanced nine years before the account, which at the foot bore the defendant's signature. The Lower Court gave decree for plaintiff. In appeal certain items were pleaded as barred, as they were more than three years old on the date of the account. The High Court allowed the objection, observing that the Rusu on which this suit was brought must be used either as revival of an original promise or as evidence of a new contract. As an acknowledgment it would obviously have no effect if not made before the expiration of the period of limitation prescribed; and if it is relied on as furnishing a new cause of action, the bare statement of an account is not a contract, there being no promise in writing such as is required by section 25, clause 3 of the Contract Act.

The bare statement of an account is not a contract.

M. H. held that manager of a Hindu family is not agent within section 20 of Act IX of 1871. (April 1878)

Since modified.

(v) In *Kumarasami Nadan v. Pala Nagappa Chetti*,⁽²⁾ plaintiff sued the defendant for money borrowed by the first defendant as the managing member of a Hindu family in November, 1869. The first defendant on the 5th January, 1873, made an endorsement on the bond acknowledging the payment of Rupees 10 and promising to pay the balance in two yearly instalments in December, 1873 and December, 1874. It was held that the relation of the managing member of a Hindu family to his co-parceners does not necessarily imply an authority upon his

(1) I. L. R., 6 Bom., 683. | (2) I. L. R., 1 Mad., 385.

part to keep alive, as against his co-parceners, a liability which would otherwise become barred. The words of section 20 of Act IX of 1871, must be construed strictly, and the manager of a Hindu family, as such, is not an agent "generally or specially authorized" by his co-parceners for the purpose mentioned in that section.

(w) In *Sankara Aiyan v. Lingam Aiyan*,⁽¹⁾ bond was executed by the 1st defendant alone not as manager, and the bond did not purport to affect the joint family with any liability. The original debt for which there may have been a joint liability, had become barred before there was any payment and the payment made was a payment not on account of that date, but of liability created by the bond. The court observe "it is not necessary, then, that we should express any opinion as to whether the manager of a Hindu family is, as such, generally authorized to acknowledge debts or make payments on behalf of the family, so as to give a new starting point for the computation of the period of limitation. On this point we need say no more than that we are not prepared to accept the ruling in *Kumarasami Nadan v. Palaniappa Chetti* without further consideration."

M. H. in a subsequent case said they were not prepared to accept the above ruling without further consideration. (March 1880)

(x) In *Gopalnarain Mozoomdar v. Muddomuttu Gup-tee*,⁽²⁾ it was held, that the manager of a joint Hindu family, or the executor of a Hindu Will, had no power under Act XIV of 1859, section 4, to revive a debt barred by limitation except as against himself. Couch, C. J., in that case observed, "I am speaking of what the law was at the time of this transaction, section 4 of Act XIV of 1859 being then applicable. It would not, we think, be right to apply in India the decisions of the English Courts as to the executors in England being at liberty not to avail themselves of the Law of Limitation, because those decisions probably rest upon the peculiar position of an executor in England, and the rights which he may have from his having been considered originally to be the representative of the ordinary, and to have entire power

C. H. held that under Act XIV of 1859 a manager of a joint Hindu family, or executor of a Hindu Will, cannot revive a barred debt. (March 1874)

Observations of Couch, C. J., on this subject with reference to Act XIV of 1859.

English decisions as to executor's liberty cannot be applied to India.

(1) 4 Ind. Jur., 568. | (2) 14 B. L. R., 49.

Probate of a Hindu Will had not the same effect as probate of a will in England.

over the estate. They would not be a safe guide in this country, where amongst Hindus an executor really is not recognized. The probate of a will by a Hindu does not have the same effect as probate of a will in England, nor does the calling the man to whom the property is left executor, put him in exactly the same position as an English executor. We therefore cannot apply those cases here, and there is no ground here for saying that any acknowledgment of Gourinarain would prevent the operation of the Law of Limitation."

M. H. F. B. held that a manager of a Hindu family has the same authority to acknowledge as he has to create debts for the family, but has no power to revive barred debt.
(February 1881)
(May 1882)

(y) In *Chinnaya v. Gurunatham*,⁽¹⁾ plaintiff and first defendant carried on a joint trade, and on settlement, the 1st defendant signed the settlement in April, 1870. In May, 1874, the 1st defendant executed a bond for the money due by the settlement. The plaintiff sought for a decree binding all the members for the debt. The court upon a review of its former decisions held "the bond of May, 1874, is not expressed as binding on the family, and if it had been so expressed, it would not have affected with liability any but the persons who executed it. A manager has authority to make payments for the family; he has the same authority to acknowledge as he has to create debts, but he has no power to revive a claim barred by limitation unless he is expressly authorized to do so; and on the 17th May, 1874, the debt acknowledged in April, 1870, had become barred."

Mr. Broughton remarks that acknowledgment of an executor under the Hindu Wills Act who has proved the will can bind the testator's estate. Such executor or any other executor cannot be agent of the beneficiary under the Will.

(z) "The later enactments regarding Limitation and the Hindu Wills Act have made considerable alterations in the law, and an acknowledgment by an executor, who has proved a will under the latter Act, would, if otherwise sufficient, bind the estate of his testator; but neither such an executor, nor any other executor, can be said to be the agent of a beneficiary under the will so as to bind him in respect of matters unconnected with the estate, and it is very doubtful whether a manager of a Hindu family could even, in respect of the estate, bind any one

(1) I. L. R., 5 Mad., 169.

but himself or some person from whom he had received due authority to do so."

(2-a) "Amongst the provisions so made applicable to Hindus by that Act (XXI of 1870) are those contained in sections 179 and 187, by the former of which it is declared 'that the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such;' and by the latter 'that no right as executor or legatee can be established in any Court of Justice unless a court of competent jurisdiction within the province shall have granted probate of the will under which the right is claimed or shall have granted letters of administration under the 180th section.' Executors appointed by the particular class of Hindu Wills contemplated by the Hindu Wills Act, thus acquired the same estate and interest in the property of the deceased, together with the same restrictions as to representing the estate in a Court of Justice, as obtained by English Law." *Shaik Moosa v. Shaik Essa*.⁽¹⁾

B. H. observed very recently that an executor of a Hindu Will coming within Act XXI of 1870 acquired the same estate and interest in his testator's property as an executor under the English Law. (January 1884)

(2-b) The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such. But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Section 4 of Act V of 1881 reproduces the provisions of sections 179 of the Indian Succession Act.

(2-c) Following the decision of the Privy Council in *Luchmee Buksh Roy v. Runjeet Ram Panday*⁽²⁾ under Act XIV of 1859, A. H., in *Rahmaui Bibi v. Hulasa Kuar*⁽³⁾ held in April, 1878, that an acknowledgment of the title of the mortgagor or of his right of redemption, signed by the mortgagee's agent, is not sufficient, under Article 148, schedule 2 of Act IX of 1871, to create a new period of limitation, though it is sufficient under the Act of 1877, of which the terms are more equitable.

Mortgagee's agent's acknowledgment of mortgage is insufficient under Act IX of 1871, Article 148.

(2-d) In *Dharma Vithal v. Govind Sadvalkar*,⁽⁴⁾

This section intends distinct acknowledgment of existing liability argural relation.

(1) I. L. R., 8 Bom., 242.

(2) 13 B. L. R., 177.

(3) I. L. R., 1 All., 642.

(4) I. L. R., 8 Bom., 99.

plaintiff's ancestor mortgaged a piece of land to the defendant's ancestor in 1797, and placed him in possession as agreed upon. Three years afterwards, both the mortgagor and the mortgagee went out of the country. The mortgagor returning first resumed possession of the land; the mortgagee returning afterwards, filed a suit in 1826, to recover possession under the terms of the mortgage, and obtained a decree in his favour. Possession was restored to him by the Civil Court in 1827, when the mortgagee passed to the officers of the court a receipt in which he acknowledged having received possession of the mortgaged land as directed by the decree. The plaintiff, the representative of the original mortgagor, on the 4th of December, 1880, sued the defendant, the representative of the original mortgagee to redeem the land. It was held that the suit was barred as the receipt incorporating the decree by reference did not operate as an acknowledgment of a mortgage subsisting in 1827, so as to give to the mortgagor a new period of limitation under this section, which intends a distinct acknowledgment of an existing liability, or jural relation, and not an acknowledgment without knowledge that the party is admitting anything. In this case, the plaintiff, to take his claim out of the statute, relied upon the plaint signed by the mortgagee's vakil in the suit brought in 1826 by the mortgagee to recover possession. It was held, that a plaint signed by a vakil before the Limitation Act IX of 1871 came into operation, does not save limitation, as the earlier Limitation Acts do not give authority to an agent to sign an acknowledgment for his principal similar to that given by section 20 of that Act, and section 19 of Act XV of 1877.

Receipt incorporating the decree by reference, held not an acknowledgment.

An acknowledgment signed by a vakil, insufficient to keep alive a cause of action under Act IX of 1871, is insufficient to sustain a suit on the same cause of action.

Acknowledgment under Article 148 of Act IX of 1871 must be of a present existing title in the mortgagor.

(2-e) Under Article 148 of Act IX of 1871, time for a suit to redeem began to run from the date of the mortgage, unless where an acknowledgment of the title of the mortgagor or of his right of redemption has, before the expiration of the prescribed period, been made in writing, signed by the mortgagee or some person claiming under him, and, in such case, the date of the acknowledgment.

In *Daia Chand v. Sarfraz*,⁽¹⁾ the court held that the acknowledgment required by Article 148 of Act IX of 1871, must be an acknowledgment of the title of the mortgagor or of his right to redeem, and that such an acknowledgment must be unqualified and made touching the mortgage. In *Ram Das v. Birjundun Das*,⁽²⁾ plaintiff sought to redeem, in December, 1879, a mortgage of July, 1815. The plaintiff relied upon an acknowledgment made by the defendants in a written statement filed by them in a suit in 1872. It was an acknowledgment of the original making of the mortgage deed and of possession being taken under it, but the statement alleged the execution, subsequently of two other deeds, practically superseding the mortgage, and altering the relation of the parties. It was held, that it was not a sufficient acknowledgment within the meaning of the above Article such as would prevent limitation from operating.

(2-f) This section re-enacts the provision contained in Article 148, schedule 2 of Act IX of 1871. *Daia Chand v. Sarfraz*⁽³⁾ is a Full Bench case in which plaintiff sought to redeem a mortgage said to have been made by their ancestors to the defendant's ancestors in 1811, and relied upon an acknowledgment of the defendant's mortgage tenure recorded in a settlement record of 1841. The Settlement Officer had prepared the record of rights, showing the interests in the village of persons holding lands, and in this record he had entered the defendants or their ancestors as mortgagees, and obtained their signatures to the correctness of the entry. It was held, that as the law of British India does not require the acknowledgment to be given to the mortgagor, the acknowledgment in the settlement record, though it did not mention the name of the mortgagor, was sufficient to give a new period of limitation.

(2-g) In the above case the Lower Courts having differed as to whether the acknowledgment was sufficient

Acknowledgment of mortgagor's title in settlement record gives fresh starting point, though it did not name the mortgagor.

A. H. Acknowledgment of mortgagor's title need not be made within 60 years of the mortgage under Act XIV of 1859.

(1) I. L. R., 1 All., 117. | (2) I. L. R., 9 Calc., 616.

(3) I. L. R., 1 All., 117, 425.

without proof that it was made within 60 years from date of the alleged mortgage, it was held that inasmuch as there was no limitation to suits for redemption of mortgage of landed property prior to Act XIV of 1859, it was unnecessary to ascertain when the mortgage was effected, the acknowledgment of 1841 being an acknowledgment of a right still subsisting and one which fulfilled the requirements of Article 48, schedule 2 Act IX of 1871.

M. H. held that such acknowledgment must have been made within 60 years of the mortgage.

(2-h) In *Mukkanni v. Manan*,⁽¹⁾ plaintiff sued in 1878, to redeem a Kanam mortgage of 1761. The Lower Appellate Court found that the mortgagor's right to redeem had been admitted in 1838, in the deed of assignment from the original mortgagee, and also in 1847 and 1856, but held that the plaintiff's right to redeem was barred, as more than 60 years had elapsed between the date of the mortgage and the date of the admission, in 1838, of the mortgagor's right of redemption. It was held that prior to 1859 there was no limitation for redemption suits, and that clause 15, section 1 of Act XIV of 1859, prescribed 60 years, unless there was an acknowledgment in the meantime, that is, within 60 years from the date of the mortgage. In *Mahomed Abdool Ruzzah v. Syud Asif Ali*,⁽²⁾ the Allahabad High Court held in May, 1871, that under Act XIV of 1859, an acknowledgment of mortgagor's title must have been made within 60 years of the mortgage.

A. H. also had held so in May 1870.

Auction purchaser of mortgagee's interest accepting sale certificate is not an acknowledgment.

(2-i) In *Raman v. Krishna*,⁽³⁾ plaintiffs sought to redeem certain lands demised on Kanam in 1817 to one Kunholen, whose rights were purchased by Mutha, ancestor of the defendant at a court sale in 1824. The Lower Appellate Court held that the sale certificate of 1824 was an acknowledgment of the mortgagor's title. The court, finding no special circumstance in the demise, treated it as a mortgage, and held that the sale certificate is not an acknowledgment by the purchaser which will satisfy the conditions of this section, and give a fresh starting point for limitation to run for redemption.

(1) I. L. R., 5 Mad., 182. | (2) 3 N-W P., H. C. R., 119.

(3) I. L. R., 6 Mad., 325.

(2-j) In *Vencataramana v. Srinivasa*,⁽¹⁾ plaintiff sued to recover arrears of rent due from a tenant who entered in 1862, as a Chalgaini tenant for one year and continued in possession without executing a fresh agreement. The Lower Appellate Court, finding that in a deposition dated 1876, the defendant admitted his liability to pay rent as a Mulgaini tenant, awarded rent from 1874. It was held that the deposition containing an acknowledgment of a right different from that claimed, was not an acknowledgment of the landlord's right, which, under this section, would entitle him to recover arrears of rent for 3 years prior to the date of the admission.

Acknowledgment of right different from that claimed, will not avail.

(2-k) In *Raghoji Bhikaji v. Abdul Karim*,⁽²⁾ plaintiff sued on the 18th August, 1875, to recover from the defendants two instalments on a bond dated 7th August, 1873. Though the defendant denied the bond, it was found that he had executed it; the bond purported to have been granted for a prior instalment bond under which the first instalment which fell due in September, 1864, was not paid; but payments since made had been received by the creditor up to 1873. The contention was that the bond sued on was merely an acknowledgment or promise to pay a barred debt. It was held that the suit was not barred. Melville, J., observes: "The alteration in the former law (section 4 of Act XIV of 1859) made by the introduction into section 20 of Act IX of 1871, of the words "promise" and "before the expiration of the prescribed period," gives some color to the argument that it was the intention of the Legislature that a debt once barred by lapse of time should not, under any circumstances, be recovered. But the supposition of any such intention is contradicted by section 25, clause 3, of the Indian Contract Act; from which it is clear that the "promise" referred to in section 20 of Act IX of 1871, is a promise introduced, by way of exception, in a suit founded on the original cause of action, and not a promise constituting a new contract, and extinguishing the original cause of

A suit on a bond executed in consideration of a barred debt, is not affected by section 20 of Act IX of 1871 corresponding to section 19 of Act XV of 1877.

(1) I. L. R., 6 Mad., 182. | (2) I. L. R., 1 Bom., 590.

action. The distinction is pointed out in the cases cited at the bar: *Malchand v. Girdhar*,⁽¹⁾ *Hargopal Premasukdas v. Abdul khan Haji Muhammad*,⁽²⁾ and also in *Gopeekishen Goshamee v. Brindabunchunder Sircar*.⁽³⁾ Following the above decision, B. H., in *Chatur Jagsi v. Tuls*,⁽⁴⁾ in which plaintiff sued on two promissory notes executed on the 5th April, 1874, or 4 days after the old debt secured by a prior note of 4th April, 1871, had become barred, held that section 20 of Act IX of 1871 does not prevent a plaintiff from maintaining a substantive action on a promissory note passed to secure the amount due on an old note which was barred by limitation at the time of the making of the new, the plaintiff's right to bring such an action being recognized by the later enactment, Act IX of 1872, section 25, clause 3.

C. H. held the word 'debt' in sections 20—21 Act IX of 1871, does not include judgment-debt.

(2-1) The word 'debt' used in this and the following section applies only to a liability for which a suit may be brought and does not include a liability for which a judgment has been obtained. It was held in *Kally Prosonno Hazra v. Heera Lal Mundle*,⁽⁵⁾ that under sections 20 and 21 of Act IX of 1871, a petition put in by a judgment-debtor and creditor on the 28th April, 1873, notifying part-payment towards the decree, would not take the decree out of the statute, and that the application for execution made on the 27th April, 1876, was barred.

C. H. Judgment-debtor's acknowledgment of debt by application for postponement of sale, does not fall under section 20 of Act IX of 1871. (January 1879)

(2-m) In *Mungol Prashad Dichit v. Shama Kanto Lahory Chowdhry*,⁽⁶⁾ application for execution was made on the 26th July, 1871, and a sale proclamation was issued on the 30th November, 1871; the judgment-debtor acknowledged his debt in writing by an application for two months' postponement of sale. The next application for execution was made on the 5th September, 1874. The Lower Court rejected the application as barred. It was held that the judgment-debtor's acknowledgment was not such an acknowledgment as was contemplated by section 20 of Act IX of 1871, and that the word "debt" referred to in

(1) 8 Bom., H. C. Rep., 6, A. C. J.

(2) 9 Idem, 429.

(3) 13 Moore I. A. 37, see p. 54.

(4) I. L. R., 2 Bom., 230.

(5) I. L. R., 2 Calo., 468.

(6) I. L. R., 4 Calo., 708.

that section was not a judgment-debt, but a liability to pay money for which a suit can be brought. Morris, J., observes "a consideration of the terms of Act IX of 1871, with the light thrown upon them by Act XIV of 1859 which precedes it, and by Act XV of 1877, which succeeds it, leads to the conclusion that "debt" referred to in section 20 Act IX of 1871, is not a judgment-debt, but, as explained in the judgment of a Division Bench of this court in *Kally Prosunno Hazar v. Heera Lal Mundh*,⁽¹⁾ a liability to pay money for which a suit can be brought."

(2-n) In *Ram Coomar Kur. v. Jakur Ali*,⁽²⁾ judgment-debtor's vakil applied on the 7th December, 1877, for additional time for payment of the amount of the decree dated 24th March, 1876. The petition was granted and on the 4th December, 1880, the next application for execution was made. It was held, that the petition constituted an acknowledgment of liability under section 19 of the Act and a new period of limitation began to run from the 7th December, 1877, the object of the words "application in respect of any property or right" in section 19 being to extend to the applications mentioned in schedule 2 the same privilege as is accorded to suits. This decision was followed in *Toree Mahomed v. Mahomed Mabood Bux*.⁽³⁾

O. H. held debtor's application for time for payment of decree debt, is an acknowledgment under this section.
(March 1882)

(March 1883)

(2-o) In *Venkatrav Bapu v. Bijesing Vithal Sing*⁽⁴⁾ plaintiffs obtained on the 20th July, 1871, a decree against the defendants for the sum of Rs. 4,083 and for the sale of their mortgaged property. On the 16th July, 1877, the plaintiffs applied for execution. The application was granted, the property was attached, and the sale was fixed for the 30th November, 1878. On the 18th November, 1878, one of the defendants applied for a postponement of the sale until harvest time, when he said he would pay the amount of the decree. The sale was accordingly, with the plaintiff's consent, postponed to the 31st May, 1879. On the 13th June, 1879, the plaintiffs informed the court that negotiations were proceeding between themselves and

B. H. held debtor's application for postponement of sale promising payment of the judgment-debt to be an acknowledgment of plaintiff's right to execute.
(Sept. 1885)

(1) I. L. R., 2 Calc., 468.

(2) I. L. R., 8 Calc., 716.

(3) I. L. R., 9 Calc., 730.

(4) I. L. R., 10 Bom., 108.

the defendants for the settlement of the decree, and prayed that their application of the 16th July, 1877, might be struck off, adding that, if the negotiations failed, they would present a fresh application. The negotiations for settlement proved abortive, and the case being one to which the Dekkan Agriculturists' Relief Act (XVII of 1879) applied, the plaintiffs took steps to obtain a conciliator's certificate. These proceedings occupied the period from the 3rd July, 1880, to the 19th January, 1881. The certificate was granted on the 1st December, 1881. On the 13th December, 1881, more than three years after the date of the previous application, *viz.*, 16th July, 1877, the plaintiffs made the present application for execution. The defendants contended that it was barred by limitation. It was held, that the application was not barred. As it was understood between the parties, when the application of the 16th July, 1877 was struck off on the 13th June, 1879, that, if negotiations failed, a fresh application should be presented, the application of the 13th December, 1881, was to be regarded as an application for the revival of the old execution proceedings. But, in any case, the application by the defendant, of the 18th November, 1877, for a postponement of the sale of his property, when he promised to pay the amount of the decree, was an admission of the plaintiff's right to execute the decree within the contemplation of this section and created a new period of limitation, which would ordinarily have expired on the 18th November, 1881.

A. H. held impliedly, acknowledgment to apply to liability under decree. (Sept. 1879)

(2-p) In *Shib Dat v. Kalka Prasad*,⁽¹⁾ it was held, in September, 1879, that the judgment-debtor having, three years after the first default, acknowledged in writing his liability under the decree and signed such acknowledgment, it did not create a new period of limitation as the decree had been already barred.

F. B., A. H. held judgment debtor's application for postponement of sale is an acknowledgment of decree-

(2-q) In *Ramhit Rai v. Satgur Rai*,⁽²⁾ application for execution was made on the 28th May, 1875, and property was proclaimed for sale on the 20th August, 1875. On

(1) I. L. R., 2 All., 443. | (2) I. L. R., 3 All., 247.

the 13th August, 1875, judgment-debtor applied for postponement of sale for the 20th September, 1875. On the 20th August, 1875, the judgment-debtor made a second application for postponement of sale. On the 29th July, 1878, decree-holder applied for execution of the decree. It was held, that limitation should be computed not from the date of previous application for execution, but from the 13th and 20th August, 1875, the dates of the judgment-debtor's application which contained an acknowledgment within the meaning of this section, and therefore gave a new period of limitation. Stuart, J., observes that the judgment-debtor's application was an acknowledgment in respect of right within the meaning of this section. The above application having been signed by a pleader specially authorised by a Vakalat to make it, it was held that the vakil was an agent duly authorised in debtor's behalf.

holder's right saving it from limitation. (Sept. 1880.)

(2-r) In *Janki Prasad v. Ghulam Ali*,⁽¹⁾ a money decree dated 24th June, 1878, directed that a certain instalment should be paid on the 22nd July, 1878, and alike on the 20th December, 1878, and the balance by certain instalments, commencing from a certain date, and that in case of default the decree-holder might realize the whole amount of the decree. The instalments were not paid at the fixed dates. It was admitted that on the 7th May, 1879, Rupees 50 was paid on behalf of the debtor, who, on the 4th February, 1880, paid Rupees 70, and on the 13th January, 1881, paid Rupees 80. All these payments were made out of court, and on the last two occasions the judgment-debtor endorsed the payments in his own handwriting. On the 5th September, 1881, the decree-holder applied for execution of the whole decree. The court dissenting from *Asmutullah Dalal v. Kally Churn Mitter*,⁽²⁾ held in September, 1882, that the application was governed by the rule contained in section 19 of Act XV of 1877, that the endorsement made by the judgment-debtor on the decree was an acknowledgment of liability under the

A. H. held that Judgment-debtor's written acknowledgment of decree debt and payment, would fall within this and the following section. (Sept. 1882.)

(1) I. L. R., 5 All., 202. | (2) I. L. R., 7 Cal., 56.

decree and that consequently limitation should be computed from the date of such endorsement, and that the application was therefore within time. It was also held that part payment made and endorsed by the judgment-debtor on the decree fell within the terms of section 20 of this Act.

Judgment-debtor's acknowledgment of decree debt by an ikrar, saves the statute, though the ikrarnama was not enforced.
(February 1885)

(2-s) In *Fateh Muhammad v. Gopal Das*,⁽¹⁾ decree-holder applied for the execution of his decree, dated 14th June, 1878, by attaching a certain mortgage bond, and the same was advertised for sale on the 11th January, 1881. On this date, an ikrarnama, which referred to the decree debt in question containing various arrangements for its satisfaction, was put in by the parties, who at the same time applied to the court to strike off the record the execution case then pending. The ikrarnama, not having been followed, the decree-holder applied on 24th December, 1883, for execution of the decree. The judgment-debtor pleaded the statute. It was held that the judgment-debtor, having admitted the decree-debt in the ikrarnama dated 11th January, 1881, and the same being an acknowledgment of debt under section 19 of Act XV of 1877, the application in question was not barred.

M. H. held this section inapplicable to applications in execution of decrees.
(March 1883)

(2-t) In *Rama v. Venkatesa*,⁽²⁾ a Full Bench case, the question was, whether this section is intended to apply to applications for execution of decrees? The judgment of Turner, C. J., runs thus: "It would be productive of the greatest inconvenience (if it indeed were possible), to apply the provisions of section 19 of the Limitation Act of 1877 to applications made in the course of suits or proceedings, and, if the terms of the section can be otherwise satisfied, we are at liberty to construe them so as to avoid such inconvenience. There are numerous applications known to the law which would be correctly described as applications in respect of a property or right in the sense we have indicated, proceedings where a party seeks the aid of a court to give

(1) I. L. R., 7 All., p. 424. | (2) I. L. R., 5 Mad., 172.

him relief in respect of some property or right otherwise than by regular suit. Of these, the Acts regulating the rights of landlord and tenant in the North-Western Provinces and generally in Bengal afford instances. We arrive, then, at the conclusion that the provisions of this section were not intended to apply to applications in execution of decrees, and that we are not constrained to apply them to such applications."

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Effect of payment of interest as such.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

Effect of part-payment or principal.

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

Effect of receipt of produce of mortgaged land.

This section corresponds with section 21 of Act IX of 1871. In the proviso of the section (20 of the Act of 1877) the Legislature have omitted the words "the debt has arisen from a contract in writing" and the words "on the instrument, or in his own books, or in the books

of the creditor" which were in the proviso of section 21 of the Act of 1871. The clause relating to the receipt of the produce of mortgaged land is new.

The principle of the doctrine of part-payment.

(2) "The principle of this doctrine is that any such payment is an acknowledgment of the existence of the debt, and from it the law raises an implication of a promise to pay the residue or the principal as the case may be, just as it does from a simple acknowledgment in writing." "The effect of payment into court as a part-payment was not questioned, and the case is in fact governed by the principle stated below, that a payment unless made as part-payment of a greater debt has no effect. It is submitted, however, that if a debt properly carries interest, the principal and interest constitute one demand, and therefore payment of the principal or of part of it takes the interest out of the statute also."⁽¹⁾

Part-payment did not operate to keep alive a debt under Act XIV of 1869.

(b) In *Raja Icvara Das v. Richardson*,⁽²⁾ the plaintiff sued three executors for the balance due of their testator's simple contract debt of more than three years standing. A part-payment had been made by the defendants within the three years previous to the commencement of the suit. Two of the defendants had also, but during their testator's life-time, given a personal undertaking in writing to pay the debt out of a fund coming to their hands. The defendants had also signed, as executors, and sent a letter to the plaintiff, informing him that they had registered his claim against the testator's estate, and that notice would be given to him when the assets, if any, were to be distributed. It was held first, that the case was not taken out of Act XIV of 1859, by the part-payment, and, secondly, that neither the personal undertaking nor the letter was such an acknowledgment in writing as to bring the case within section 4 of the same Act. See also *Gora Chand Dutt v. Lokenath Dutt*.⁽³⁾

The words "prescribed period" mean the prescribed period of limitation.

(c) In *Ramasebuk v. Ram Lall Koondoo*,⁽⁴⁾ the argument was, that the words in section 20 of Act XV of 1877

(1) Darby and Bosanquet, pp. 70 & 71.

(2) 2 Mad., H. C. R., 84.

(3) 8 W. R., 334.

(4) I. L. R., 6 Calc., 815., S. C., 8 Calc., L. R., 457.

‘before the expiration of the prescribed period’ refer, not to the prescribed period of limitation, but to the period prescribed for the payment of the debt. “In our opinion, however, they mean the prescribed period of limitation, although the section does not expressly refer to suits. Reading section 20 together with section 4 of the Act, which is the section that prescribed the different periods of limitation for different descriptions of suits, the words ‘prescribed period’ in section 20 have, we think, reference to section 4 and the second schedule of the Act. The words ‘prescribed period’ alone are obviously used for the purpose of conciseness, as it will be found that they are similarly used in illustration (b) of section 4 of the Act, while there can be little doubt about their meaning in the illustration referred to.”

(d) In *Valia Tamburatti v. Vira Rayan*,⁽¹⁾ plaintiff sued in June, 1874, to recover the principal sum and one year’s interest due on a bond of 11th March, 1866, by which the rent of certain land was assigned as security for interest. No date was specified for re-payment of the principal sum. Interest was paid up to October, 1871. It was held that, assuming that the period of limitation was three years, and that it had run out both before action was brought and before Act IX of 1871 came into operation, section 21 of that Act operated to save the action; that at the period of that law coming into force, there was still a contractual right existing, and that the right of action was restored by the payment of interest. In *Teagaraya Mudali v. Mariappa Pillai*,⁽²⁾ it was held, that the exception of payment of interest contained in section 21 of Act IX of 1871 was not confined to payments made after that Act came into force, but applies also to payments made before that date. In this case payments endorsed before Act IX of 1871 came into force, on a registered bond, dated 9th August, 1867, providing for re-payment on the 10th of April, 1868, was considered sufficient to save the claim.

Payment of interest insufficient under Act XIV of 1859 was held sufficient to save the action.

(1) I. L. R., 1 Mad., 228. | (2) I. L. R., 1 Mad., 264.

M. H.
Mark or signature to an endorsement satisfies the requirement of this section.

(e) The requirement of the proviso, that part-payment of the principal of a debt must be in the hand-writing of the person making the same, is satisfied if the payer signs or affixes his mark beneath an endorsement not written by him. *Sesha v. Seshaya*.⁽¹⁾ In following the above ruling, *Hutchins, J.*, in *Ellappa v. Annamalai*,⁽²⁾ observes "that when there is a writing setting out the fact of payment and the debtor affixes his mark or signature thereto, he adopts the writing and makes it his own, and by his signature causes the fact to appear in his own hand-writing." In *Vadlamudi Pichina v. Tanuiru Appadu*,⁽³⁾ which was an earlier case, a Division Bench, held in April, 1881, that the payer's mark to the endorsement will not satisfy the requirement of this section. They observed, that part-payment of principal should "appear in the hand-writing of the person making the payment. This requirement is not satisfied by a mere signature; and signature by a mark would be the least satisfactory form of signature."

Endorsement of payment on bond need not show that payment was made towards principal.

(f) In *Ankamma v. Rama*,⁽⁴⁾ plaintiff sought to take the case out of the statute by an endorsement of payment on the bond in the defendant's hand-writing. In reply to the question, whether endorsement should show that payment was made towards the principal, it was held that it need not show it, but only the fact of payment.

Endorsement of cheque by debtor not showing the purpose of payment, held not to satisfy the conditions of this section.

(g) In *Mackenzie v. Tiruvengadathan*,⁽⁵⁾ defendant granted to plaintiffs in September, 1881, a pro-note for Rs. 4,000, agreeing to pay the same by monthly instalments of Rs. 500 each, and to pay the whole debt on demand if any instalment was in arrear. The defendants paid on twelve different dates sums amounting to Rs. 1,799, but these payments were not made according to the tenor of the bond. The last payment was Rs. 100 by a cheque endorsed by the 2nd defendant to the plaintiff on the 4th September, 1882. The endorsement did not state for

(1) I. L. R., 7 Mad., 55.

(2) I. L. R., 7 Mad., 76.

(3) 5 Ind. Jur., 520.

(4) I. L. R., 6 Mad., 281.

(5) I. L. R., 9 Mad., 271.

what purpose the payment was made, but the plaintiffs had credited the sum in their books on the 4th September, 1882. The other payments had been made more than three years before the suit. It was held that the cheque was only an order for payment and it did not evidence any part-payment at all as it did not show for what purpose the payment was made, and that such an endorsement did not satisfy the conditions of this section so as to give rise to a new period of limitation. The suit was rejected under Article 75.

(h) In *Hanmantmal Motichand v. Rambabai*,⁽¹⁾ plaintiff sued on the 12th March, 1877, for Rs. 10,000 on an account stated and signed by the defendant. The defendant pleaded that the suit was barred. The account was dated 19th October, 1873, and since, two items were advanced to the defendant on the 8th November, 1873, and 12th September, 1876 respectively. The defendant made payments in October and December, 1875, and March and September, 1876. It was held that, as there was no intimation by the defendant that any payment made by him was to be appropriated to interest, the plaintiff cannot claim the benefit of the 1st clause of section 21 of Act IX of 1871.

Payment by debtor without intimation to appropriate it to interest, does not fall under clause 1.

(i) A payment made by an agent after the death of his principal cannot give a fresh starting point from which to calculate limitation under this section, as under section 201 of the Contract Act an agency is terminated by the death of the principal. *Sirdarni Kishen Kour v. Manna Lal* (Punj. Rec., No. 78 of 1880.)⁽²⁾

Payment by agent after principal's death, cannot save limitation.

(j) Where in a suit (*Whitley v. Lowe*, 25 Beav., 421; 2 DeGex and J., 704) for partnership accounts, a receiver was appointed, and made payments to the plaintiffs on account of a debt due to them from one of the defendants under a covenant in the partnership deed, but such payments were not authorized by the terms of his appointment, nor was it proved that the defendant sanctioned their being made, it was held that the receiver was not the

English case on the effect of payment by a receiver.

(1) I. L. R., 3 Bom., 198. | (2) Rivaz's Limitation Act, p. 63.

What would be the effect if court had authorized the payment?

Mortgagee receiving produce in lieu of interest under unregistered mortgage, not considered to receive as mortgagee.

Receipt of rent by mortgagee under a lease independent of mortgage, held not to amount to payment of interest under Act IX of 1871.

Payment of rent by mortgagor under a subsequent lease to him by mortgagee, was regarded not as payment of interest under Act IX of 1871.

agent of the defendant for the purpose of making the payments, and that they did not prevent the operation of the statute. Nothing was said as to what would have been the effect in case the receiver had been authorized by the court to make the payments relied on.⁽¹⁾

(k) In *Pichandi v. Kandasami*,⁽²⁾ plaintiff sued for money due upon an unregistered mortgage-deed of August, 1869, alleging that he was in possession of the land at the date of the suit in April, 1883. It was held that the deed being inoperative to create a mortgage, the plaintiff cannot claim to have received the profits of the mortgaged property nor to have received them as mortgagee.

(l) In *Ummer Kutti v. Abdul Kadar*,⁽³⁾ defendant, who mortgaged, in 1858, his land to the plaintiff with possession for a term of 5 years, took a lease of the land in 1861 from the plaintiff and paid him rent under it until 1870-71. The mortgage debt was re-payable on the expiry of the term. Plaintiff brought the suit out of which this appeal arose to recover the debt from the mortgagor. It was pleaded that the suit was barred by limitation, to which plaintiff replied that the receipt of rent was in fact a payment of interest, and that from the last payment of interest a new period of limitation arose. It was held, that the case being governed by the provisions of Act IX of 1871, the payment of rent under an agreement entirely independent of the original mortgage could not be regarded as a payment of interest.

(m) In *Palliagatha Ummer Kutti v. Abdul Kadar*,⁽⁴⁾ a Kanom was granted in 1858 for five years, to secure re-payment of a loan, and a lease was made in 1861 to the grantor of the Kanom by the Kanom-holder, and rent was paid under the lease until 1871. The suit was brought in September, 1877, to recover from the defendants personally the Kanom amount and the arrears of rent for seven years. It was pleaded that payment of rent was in fact a pay-

(1) *Darby and Bosanquet*, p. 107.
(2) *I. L. R.*, 7 Mad., 539.

(3) *I. L. R.*, 2 Mad., 165.
(4) *I. L. R.*, 3 Mad., 57.

ment of interest from which date the plaintiff had a new period of limitation. The court held that the suit to recover the Kanom amount and the arrears of rent for seven years was barred by limitation except as to three years' arrears of rent. As to the payment of rent, the court observe: "Under the present law, this may be so, if it be held that payment of rent by the mortgagor is such a receipt of produce in virtue of a usufructuary mortgage as is to be deemed equivalent to a payment of interest; but this provision is not to be found in Act IX of 1871, and although if the payment of rent had, as part of the original agreement or otherwise, been agreed as a provision for the interest in the debt, we might have held that it fell within the narrower terms of Act IX of 1871, yet, in the circumstances of the present case, it is impossible in our judgment to hold that the payment of rent under an agreement entirely independent of the original mortgage can be regarded as a payment of interest as such."

(n) In a suit on a bond which stipulated that half the produce of certain land should be given as long as the principal remained unpaid, held, that the delivery of the produce was equivalent to the payment of interest and operated to keep the claim on the bond alive within the meaning of section 21 of the Act of 1871. *Haji v. Musamat Hasan* (Punj. Rec., No. 6 of 1874.) But held, that the mere receipt of the produce of mortgaged land is not equivalent to the receipt of interest within the above section, so as to keep the mortgage-debt alive. *Ram Kishen v. Nawab* (Punj. Rec., No. 74 of 1874.)⁽¹⁾

Case where payment of produce was held equivalent to payment of interest.

(o) In *Ramchendra Ganesh v. Devba*,⁽²⁾ plaintiff sued in 1880, for money due on a registered bond, dated June, 1861. The debt was secured on service land, of which the debtor was to remain in possession and pay annual rent to the plaintiff in lieu of interest. This suit was brought to recover the principal with arrears of unpaid interest. To meet the plea of bar, the plaintiff

Money realized in execution of decree cannot be considered part-payment under this section.

(1) Rivaz's Limitation Act, p. 64.

(2) I. L. E., 6 Bom., 626.

Payment to the Nazir is not payment to creditor of interest as such.

pleaded that under a decree he had obtained against one of the defendants, he recovered money through court in 1879. The High Court observed, that payment to the Nazir of the court in satisfaction of the judgment-debt is not a payment to the creditor of interest as such. *W. Moran v. Dewan Ali Sirang* (8 Bom., L. R., p. 418). An acknowledgment must contain an express or implied promise to pay: *Smith v. Thorne*, (18 Q. B., 134.) Payment of interest under a judgment recovered, not being such, that promise to pay the principal could be inferred in fact from it is not sufficient to take the principal debt out of the Statute of Limitations: *Morgan v. Rowland* (L. R., 7 Q. B., 493). The principle underlying all the Statutes of Limitation is, that a payment, to prevent the barring by statute, must be an acknowledgment by the person making the payment of his liability, and an admission of the title of the person to whom the payment is made. See *Harlock v. Asherry* (19 L. R., Ch. Div., 539 reversing *Fry, J's* judgment, in 18 Ch. Div., 229).

Section 19 relates to the effect of acknowledgment; section 20 relates to the effect of payment.

(p) Section 19 of the Limitation Act, relating to the effect of acknowledgment in writing, distinctly provides for a new period of limitation to be computed from the date of acknowledgment, also of an "application in respect of any property or right," while section 20, clause 1, which relates to the effect of payment of interest, as such, refers to "a debt or legacy," and clause 2, which relates to part-payment of principal, refers only to "a debt."

High Courts of Calcutta, Bombay, Allahabad, hold section 19 to apply to decrees.

(q) As to the applicability of section 19 to the acknowledgment of decree-debt by judgment-debtor, the High Courts of Calcutta, Bombay and Allahabad agree, while the High Court of Madras holds that section inapplicable to applications in execution of decrees. (*Vide Notes 2-N, 2-O, 2-Q, 2-R, 2-S, 2-T, section 19.*)

C. H. holds section 20 inapplicable to decrees while A. H. holds otherwise.

(r) As regards the application of section 20 to payments made out of court towards a decree, the Calcutta High Court held, that such payment could not stop limitation once begun, while A. H., dissenting from it, held such payment to fall within this section.

(s) Section 206 of Act VIII of 1859 related to payments made out of court towards decree, and the corresponding section 258 of the Civil Procedure Code of 1877 has been reproduced as section 258 in the Code of 1882. Before proceeding to review the decisions bearing upon these sections, it is necessary to refer to them, and they are exhibited in the following table for ready reference.

Section 206 of Act VIII of 1859 and 258 of the Acts of 1877 and 1882 exhibited in the following table.

Act VIII of 1859.	Act X of 1877.	Act XIV of 1882.
<p>206. All monies payable under a decree shall be paid into the court, whose duty it is to execute the decree, unless such court or the court which passed the decree shall otherwise direct. No adjustment of a decree in part or in whole shall be recognised by the court unless such adjustment be made through the court or be certified to the court by the person in whose favour the decree has been made or to whom it has been transferred.</p>	<p>258. If any money payable under a decree is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257-A, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree.</p> <p>The judgment-debtor also may inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree-holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.</p> <p>No such payment or adjustment shall be recognized by any court unless it has been certified as aforesaid.</p>	<p>Section 258 of Act X of 1877 has been reproduced as such in Act XIV of 1882.</p>

(t) In *Bhubaneswari Debi v. Dinanath*,⁽¹⁾ it was held in March, 1869, that a judgment-creditor is entitled to prove payment made according to the terms of a kist-bundi for the purpose of showing that his right to sue out

Peacock, C. J., held decree-holder could prove payment out of court towards decree to take decree out of the statute. (March 1869.)

(1) 2 B. L. R., Ac., 320.

execution under the kist-bundi was not barred by limitation. The kist-bundi executed by the judgment-debtor to pay off the decrees by instalments, was ordered by the judge to be entered in the register book. Peacock, C. J., observes: "I think that the plaintiff was entitled to prove the payments made under the kist-bundi for the purpose of showing that his right to sue out execution under the kist-bundi was not barred by limitation. I am not sure that a part-payment under a decree may not be proved for the purpose of avoiding limitation, although the payment has not been made through the court, or certified to the court. I am disposed to think that the words "no adjustment of a decree in part or in whole shall be recognized by the court," in section 206, mean that no adjustment shall be recognized as an adjustment in favour of the debtor unless it is made through the court, or certified to the court by the person in whose favor decree has been made; the meaning being, that the person in whose favor the decree has been made is not to be bound by an alleged payment out of court unless he has certified it. If the Legislature had contemplated the Statute of Limitation, and had intended to prevent a payment made within the period of limitation from being made use of to prevent the operation of limitation, I should think they would have required the payment to be certified by the defendant, who would in that case be affected by it. I am corroborated in this view by finding that no time is fixed within which the plaintiff is to certify. If the plaintiff comes in at any time, and certifies that he has been paid, he must be bound by it; but if limitation was the object of the Legislature, they would have required the certificate to be made within a fixed time. The above decision was followed in *Fakir Chand Bose v. Madan Mohan Ghose*,⁽¹⁾ where the same judge held, that on the decree-holder proving payments to the satisfaction of the court, the defendant will be at liberty to show that he had not made the payments and that the decree was barred.

Peacock, C. J., followed his own ruling in September 1869.

(1) 4 B. L. R., F. B., 182.

(U) With reference to the above observations, the Legislature enacted in the Limitation Act of 1877, by Article 161, for the issue of a notice under section 258 of the Procedure Code, to show cause why the payment or adjustment therein mentioned should not be recorded as certified. The application is required to be presented within 20 days from the date of payment or adjustment. The Bombay High Court observe, that the provisions of section 258, which enables a judgment-debtor to apply for a notice is, in effect, rendered nugatory by the shortness of the period of 20 days within which the Limitation Act requires such an application to be made: *Patankar v. Devji*.⁽¹⁾

Article 161 was for the first time enacted in the Limitation Act of 1877.

B. H. observes, the above Article renders nugatory section 358 of C. P. C.

(V) In *Kally Prosonno Hazra v. Heera Lal Mundle*,⁽²⁾ the last application for execution of the decree had been made on the 14th of December, 1872, and a notice under section 216, Act VIII of 1859, issued on the 19th of January, 1873, and on the 28th of April, 1873, the judgment-debtor filed a petition notifying part-payment, which petition was signed by the judgment-creditor. In an application for execution made in April, 1876, it was held, that the execution was barred inasmuch as the word "debt" in sections 20 and 21 of Act IX of 1871 did not include a liability for which judgment has been obtained. Following the above decision, the court, in *Mungol Prashad Dichit v. Shama Kanto Lahory*,⁽³⁾ held in January, 1879, that the judgment-debtor's acknowledgment of the decree debt by an application for two months' postponement of sale, would not extend the period of limitation.

C. H. Part-payment of debt due under a decree held not to come within section 21 of Act IX of 1871. (June 1877.)

Another decision of C. H. (January 1879.)

(W) In *Asmutullah Dalal v. Kally Churn Mitter*,⁽⁴⁾ the terms of compromise in a suit for money provided that the debt should be paid by monthly instalments, and that on the failure to pay any three successive instalments the entire amount should be recoverable by application to execute the full decree. The decree was dated 12th June, 1875, the first instalment was due in July, 1875, and the

C. H. held that no payment made towards decree, could stop limitation once begun. (March 1881.)

(1) I. L. R., 6 Bom., 146.

(2) I. L. R., 2 Cal., 468.

(3) I. L. R., 4 Cal., 708.

(4) I. L. R., 7 Cal., 56.

last in October, 1877. Default was made in payment of the first three instalments, but the decree-holder did not apply for execution, and accepted a subsequent payment. On the 13th December, 1879, he applied for execution for the amount then remaining due. It was held that the period of limitation prescribed by Article 179 of Act XV of 1877, began to run on the third default taking place, and that no subsequent payments should stop limitation once begun.

A. H. dissenting from C. H. held part-payment to fall within this section.

(X) In *Janki Prasad v. Ghulam Ali*,⁽¹⁾ in which the judgment-debtor, for a decree, dated 24th June, 1878, had paid out of court rupees 50 on the 7th May, 1879, rupees 70 on the 4th February, 1880, and rupees 80 on the 13th January, 1881, and had endorsed the last two payments in his own hand-writing on the decree. The last application for execution was made on the 5th September, 1881. It was held in September, 1882, that the part-payment made and endorsed by the debtor on the decree fell within the terms of this section.

One of several joint-contractors, &c., not chargeable by reason of acknowledgment or payment made by another of them.

21. Nothing in sections 19 and 20 renders one of several joint-contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

S. 4 of Act XIV of 1859.

(a) Section 4 of Act XIV of 1859 provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them. This section referred only to legacy or debt.

S. 20, Act IX of 1871.

Explanation 2 of section 20 of Act IX of 1871, referred only to the cases of "several partners or executors."

Section 21 of 1877.

Section 21 of the later Act (1877) refers to 4 classes of persons, *vis.*, "several joint-contractors, partners, executors or mortgagees."

Observations of Scott, J.

(b) "It will be noticed that this goes further than

(1) I. L. R., 5 All., 201.

the English Law, which does not expressly mention partners, but only includes contractors or co-debtors—Mercantile Law Amendment Act 1856, section 14. I think, however, the meaning of the word 'only' in section 21 is, that it must also be shown that the partner signing the acknowledgment had the authority, express or implied, to do so. In a going mercantile concern, such agency is, I think, to be presumed as an ordinary rule: (see Lindley on Partnership and *Goodwin v. Parton*. 41 Law Times, 91.)" *Premji Ludha v. Dossa Doongersey*.⁽¹⁾

(c) Notwithstanding the provisions of this section, it may always be shown that the joint-contractor, partner, executor, or mortgagee, who signed the acknowledgment or made the payment, was acting as a duly authorized agent of the other joint parties within the meaning of section 19.

(d) In *Khoodee Ram Dutt v. Kishen Chand Golecha*,⁽²⁾ the court held that section 20 of Act IX of 1871 cannot apply to partnership accounts or to cases where one partner by the ordinary rules of partnership is able to bind his co-partner. Each partner who does any Act necessary for, or usually done in carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners, that any restriction shall be placed upon the power of any one of them, no act, done in contravention of such agreement, shall bind the firm with respect to persons having notice of such agreement.

(e) In *Premabhai Hemabhai v. T. H. Brown*,⁽³⁾ which was a suit brought on two promissory notes granted by one of the partners of a firm of carriers, Melvill, J., observes, "It is clear that one partner of a partnership *in trade*, has an implied authority to bind the firm by drawing a bill, or giving a promissory note in the name of the firm; but

"Only" means that partner signing acknowledgment, must also be shown to have had authority to do so.

One of joint-contractors, &c., may be shown to act as authorised agent.

Explanation 3 of section 21 of Act IX of 1871, held inapplicable to cases where one partner by rules of partnership can bind his co-partner. (Feb. 1876.)

Partner's power to bind co-partners under section 261 of Act IX of 1872.

A partner of a firm of mercantile character has implied authority to bind the firm, but not the partner of a Carrying or Mining Company or firm of Attorneys.

(1) I. L. R., 10 Bom., 362. | (2) W. R. 25, p. 145.

(3) 10 B. H. C. R., 321.

in the case of partnerships which are not of a mercantile character, there is no such implied authority. Thus, in the case of a Mining Company, *Dickinson v. Valpy* (10 B. and C., 128), or a Farming Company, *Greenslade v. Dower* (7 B. and C., 635), or a firm of Attorneys, *Hedley v. Bainbridge* (3 Q. B., 316), a partner cannot bind the firm by a Bill of Exchange or a promissory note, unless he has express authority to draw or make it. In the present case, the firm of Hewett & Co. was certainly not an ordinary trading partnership. It was merely a Carrying Company, formed for the purpose of carting goods from the railway to the town of Ahmadabad, and the drawing and accepting of bills, or making of promissory notes, was in no way necessary for the purpose of carrying on the business of such a partnership. We must hold, therefore, that Hewett had no implied authority to make the notes on which the plaintiff sues."

If acknowledgment of debt is given by one partner when the firm is a going concern, his authority to acknowledge must be presumed.

(f) In *Premji Ludha v. Dossa Doongersey*,⁽¹⁾ the plaintiff, as heir of his mother, sued a firm in which he was himself a partner, to recover the amount of certain loans which he alleged his mother in her lifetime had made to the said firm. The plaintiff was made a defendant in the suit along with the other partners. The alleged loans were made on the 2nd November, 1881, and the 12th October, 1882. The present suit was not filed until December, 1885. The plaintiff, however, relied on an acknowledgment signed in his mother's account book by himself as partner in the firm on the 1st November, 1883. The 1st defendant did not appear or put in any defence. The 2nd defendant pleaded limitation, and alleged that on the 2nd November, 1880, prior to the date of the alleged loans, he had retired from the firm, and therefore was not liable. From the evidence given at the hearing, it appeared that the business stopped, so far as buying and selling and fresh trading were concerned, at the end of the year 1881, and that subsequently to that date the partners were occupied solely in winding up the

(1) I. L. R., 10 Bom., 358.

affairs of the firm. It was held, that, under the circumstances, the acknowledgment given by the plaintiff did not bind the other partners, and that the claim against them was barred. If, at the time the acknowledgment was given, the firm had been a going concern, the plaintiff's authority to make such an acknowledgment on behalf of the firm might have been presumed; but in this case the business had been closed, and the partnership entirely dissolved. The presumption, therefore, which arises in active partnership no longer existed, and there was no evidence that the plaintiff had been expressly authorized to act for the other partners in making an acknowledgment.

In this case no such presumption was held to arise, as partnership had been dissolved.

(g) "It should be observed that though partnership-debts are joint-debts, they stand on a somewhat different footing from other joint-debts during the continuance of the partnership, because so long as the partnership exists, one partner, in making payments on account of partnership-debts, may be presumed to do so as agent of the firm, and therefore to bind the firm; but on the dissolution of partnership by death or otherwise, the agency determines, and therefore no payments made after that time can affect any other party than the person who makes them." (*Thompson v. Waithman*, 3 Drew., 628; *Bristow v. Miller*, 11 Ir. L. Rep., 461).⁽¹⁾ In *Watson v. Woodman*,⁽²⁾ Sir Charles Hall, V. C., observes, "if while the partnership subsisted, each partner could and should be deemed to be the agent of the other to make payments, so as to exclude the operation of the statute, such agency, I consider, terminated on the dissolution of the partnership; no such agency being by the deed of dissolution expressly or necessarily or otherwise impliedly created." He alludes to *Bristow v. Miller*, in which Crampton, J., said "*Kilgorn v. Finlyson*, (1 H. B., 155), is a clear authority to shew that after a partnership is dissolved, one of the late firm cannot by his act or admission involve his co-partner in any new legal liability. In that case, one partner had upon a dissolution been appointed to liquidate the debts of the

English Law as to payment by one partner on account of partnership debts. 19 & 20 Vict. c. 97, sec. 14 does not expressly refer to partner.

(1) *Darby and Bosanquet*, p. 85. | (2) L. R., Eq. 20, p. 730.

partnership, but it was held that any acknowledgment of debt by him would not affect the other partner. The acknowledgment was referred to the new capacity of the partner as manager to wind up the concern."

Acknowledgment by one of several executors or administrators as such.

(h) Section 271 of Act X of 1865, and section 92 of Act V of 1881, provide that when there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration. In *Chander Kant Mitter v. Ram Narain*,⁽¹⁾ the court observe that where property is devised by will to executors, any admission by parties other than the executors to the will, would not bind the estate of the deceased, and the admission of one executor would not bind another, particularly if not made in the character of executor.

Acknowledgment by one of several mortgagees.

(i) Where there are several joint-mortgagees, an acknowledgment by one of them neither gives a new period of limitation as regards a share of the mortgaged property, nor in respect of the whole property, if the case be governed by Act IX of 1871, or Act XIV of 1859, neither of which Acts recognize an acknowledgment by an agent in suits for redemption, and is therefore absolutely without effect. *Hakim Devi Doyal v. Prab Dyal*, (Punj. Rec., No. 85 of 1880), and *Mussammat Mah Bibi v. Motan Mal* (Ib., No. 61 of 1877). But see *Khair Muhammad v. Ahmudin*. (Punj. Rec., No. 78 of 1878). Under the present Act, the question might arise in such cases as to whether or no the mortgagee signing the acknowledgment was acting as a duly authorized agent for his co-mortgagees. In the English case of *Richardson v. Younge*, (L. R., 6 Ch., 478) which is cited by Fitzpatrick, J., in *Mussammat Mah Bibi v. Motan Mal*, (*ubi supra*), the question was as to the effect of an acknowledgment by one of two joint-mortgagees under section 28 of III and IV Wm. 4, C. 27, which section, however, provides for the case of an acknowledgment by one of a number of mortgagees or persons claim-

English Statute provides for breaking up a mortgage into portions to give effect to the acknowledgment of one of several joint-mortgagees.

(1) 8 W. R., p. 63.

ing under a mortgagee, enacting that such acknowledgment shall be binding only as against the person making it, and providing for the apportionment of the mortgage-debt between him and the others. The joint-mortgagees in the above case were, however, trustees, and had, therefore, no several and apportionable interest in the premises. Three views were suggested in the argument. First, that an acknowledgment by one bound both; secondly, that it bound one-half of the property, and enabled the plaintiff to redeem one-half on payment of one-half the debt; and, thirdly, that the acknowledgment by one was ineffectual altogether. This last view, which was in accordance with that of the Vice-Chancellor (from whose decision the case was on appeal before the Lords Justices) was adopted by the court, but it was expressly stated by James, L. J., that the decision was confined to the case of mortgagees who are trustees, and are shown to be such on the face of the deed. See *Banning*, pp. 169, 170. Section 21 of the present Act expressly provides that an acknowledgment made by one mortgagee shall not bind his co-mortgagees, and there being no provision in the Act (as in the English Act) giving such acknowledgment the effect of breaking up the mortgage into portions, the acknowledgment must still be wholly ineffectual in the absence of proof that the mortgagee signing the acknowledgment was acting as a duly authorized agent for the other mortgagees. This rule would, however, probably be held only to apply in the case of a single mortgage to a number of persons. As pointed out by Fitzpatrick, J., in *Mussammat Mah Bibi v. Motan Mal*, where a single mortgage is really a number of mortgages of different properties to different persons executed in the same deed, the transaction will be treated as a number of different mortgages, and an acknowledgment by one of the mortgagees in respect of the property mortgaged to him will enable the mortgagor to take advantage of the acknowledgment for the purposes of limitation as against such mortgagee.⁽¹⁾

Such acknowledgment under section 21 of the Indian Act is wholly ineffectual.

Mortgagor can rely on such acknowledgment if he had mortgaged different properties to different persons by one deed.

(1) *Rivaz's Limitation Act*, pp. 54—55.

Effect of substituting or adding new plaintiff or defendant.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

Proviso where original plaintiff dies.

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff :

Proviso where original defendant dies.

Provided also, that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

(a) This section refers only to new plaintiff or defendant being substituted or added. There is no analogous provision with respect to appeals.

Provisions of C. P. C. as to adding parties.

Clause 5, section 32 of the Code of Civil Procedure, which provides for adding parties in the court of first instance, runs thus. All parties whose names are so added as defendants, shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons. Section 559 of the Code providing for the addition of respondents, makes no reference to section 22 of the Limitation Act. The amended section 582 of the Code of 1882, does not make the terms "plaintiff" and "defendant" in section 32 include "appellant" and "respondent."

Appellate Court's discretionary power of making a party to decree as respondent under section.

(b) In *Monickya Moyee v. Boroda Prosad Mookerjee*,⁽¹⁾ the Lower Court discharged the original mortgagee from liability to pay interest. In the appeal preferred

(1) I. L. R., 9 Calc., 355.

without making him a party, the question was whether, apart from the discretion vested in the court by section 5 of the Limitation Act, the court had power to make him a party under section 559 of the Civil Procedure Code, which does not refer to this section as section 32 of the Civil Procedure Code does. It was held that section 559 gives full power to make the mortgagor a respondent, and that the discretion conferred by that section is not limited by any provisions in the Limitation Act.

559 of C. P. C.
is not limited
by this section.

(c) In the Court of Wards *v. Gaya Prasad*,⁽¹⁾ two defendants were jointly liable. The plaintiff, by some carelessness, appealed against the first defendant only, and the 2nd defendant was made respondent after the appeal time had expired. It was held, that section 22 of the Limitation Act referring to "suit," and there being no analogous provision with respect to appeals, an Appellate Court has a discretionary power to substitute or add a new appellant or respondent after the period of limitation prescribed for an appeal.

A. H. also held
so.
(January 1879.)

(d) *S* sued *N* and *R* jointly and severally for certain moneys. The courts of first instance gave *S* a decree for such moneys against *N* and dismissed the suit against *R*. *N* appealed from the decree of the court of first instance, but *S* did not appeal from it. The Appellate Court, at the first hearing of *N*'s appeal, made *R* a respondent, the period allowed by law for *S* to have preferred an appeal having then expired, and eventually reversed the decree of the court of first instance, dismissing the suit as against *N* and giving *S* a decree against *R*. It was held, that although the Appellate Court was competent to make *R* a party to the appeal under sections 32 and 582 of Act X of 1877, yet it was not competent, with reference to section 22 of Act XV of 1877, to give *S* a decree against *R*, the former not having appealed from the decree of the court of first instance within the time allowed by law. *Ranjit Singh v. Sheo Prasad Ram*.⁽²⁾

A. H. held Appellate Court incompetent to decree against a respondent added after appeal time and exempted from the claim by the lower court.
(Nov. 1879.)

(1) I. L. R., 2 All., 107.

(2) I. L. R. 2 All., 487.

A. H. held section 559 of C. P. C. does not empower Appellate Court to make appeal for appellant by introducing other respondents. (January 1888.)

(e) In *Atmaram v. Balkishen*,⁽¹⁾ it was held that where a defendant, having an unappealed decree in his favor, is not interested in the result of the plaintiff's appeal against a co-defendant, section 559 of the Code does not empower the court to add him as a respondent to the appeal. Straight, J., observes: "we do not think that section 559 of the Code empowers an Appellate Court virtually to make an appeal for an appellant, who has refrained from availing himself of his privileges under the law, by introducing for him other respondents than those he has included in his petition of appeal."

Suit against defendants added after the plaint was filed, rejected as barred.

(f) In *Obhoy Churn Nundi v. Kritharthamoyi Dosee*,⁽²⁾ plaintiff, after instituting the suit for property against one of several persons in possession thereof, added such persons as defendants after the period of limitation prescribed for a separate suit on the same cause of action against them had elapsed. It was held, that the suit as against the added defendants must be dismissed as barred. *Abdul Karim v. Manji Hansraj*⁽³⁾ was a suit instituted before the 1st of April, 1873, and subsequent to that day *B* was made a co-defendant. It was held that the Law of Limitation applicable, as far as *B* was concerned, was Act IX of 1871, and therefore under section 22 the suit was not to be deemed to have been instituted against *B* till the day on which he was made a party.

Assignees of plaintiff's interest after suit added as parties are not affected by this section.

(g) In *Suput Singh v. Imrit Tewari*,⁽⁴⁾ after the plaint had been filed, and before summons to the defendants had been issued, the plaintiffs assigned their interest in the claim to certain other persons who were since added as parties, and the summons and other proceedings were issued and taken in their names. It was held, that section 22 of Act XV of 1877 does not apply to a case in which the person to whom a right of suit is assigned after the institution of the suit obtains leave to carry on the suit. The court observe: "in the first instance the original plaintiffs were the only

(1) I. L. R., 5 All., 266.

(2) I. L. R., 7 Calc. 284.

(3) I. L. R., 1 Bom., 295.

(4) I. L. R., 5 Calc., 720.

persons who could institute the suit; and when they afterwards assigned their interest, it was perhaps not necessary for the persons to whom they assigned it to become parties at all; but if they did so, they would only continue the suit, not in substitution, but in conjunction with, and as the representatives in interest of, the original plaintiffs; and it was merely a mistake in form to have summoned the defendants at the suit of the assignees."

(h) In *Fisher v. Pearse*,⁽¹⁾ plaintiff was arrested on the 27th June, 1883, by a bailiff of the Small Cause Court for the defendant's decree, dated May, 1883. The plaintiff, who had already paid the amount into court, having been unable to produce his receipt for payment, the bailiff refused to release him until payment was made. The plaintiff filed his suit in March, 1884, against the 1st defendant, and on the 5th of July, 1884, added as defendants the Cashier who had received the money and the Chief Clerk who had issued a certificate of non-satisfaction. It was held that the suit should be rejected as against the 1st defendant as there was no bad faith, fault or irregularity on his part, and that the suit as against the Cashier and the Clerk was barred as more than one year had elapsed from the date of the termination of the plaintiff's imprisonment.

In a suit for damages, claim as against two defendants since added rejected as barred.

(i) In *Manni Kasaundhan v. Crooke*,⁽²⁾ plaintiff, after filing his plaint, and three months after the accrual of the cause of action, applied to substitute the name of the President for that of the Secretary. It was held that by reason of such substitution, the suit could not be deemed to have been instituted against such committee when such substitution was made, section 22 of Act XV of 1877 applying to the case of a person personally made a party to a suit and not to the case of a committee sued in the name of their officer, and that such substitution when applied for should have been made.

Substitution of the name of the President for that of the Secretary after time not affected by this section.

(1) I. L. R., 9 Bom., p. 1.

(2) I. L. R., 2 All., 298.

Plaintiff who sued as assignee subsequently amending his plaint by calling himself attorney for the original mortgagee, is not affected by this section.
(August 1877.)

(j) In *Ganpat Pandurang v. Adarji Dadabhai*,⁽¹⁾ plaintiff as assignee of an equitable mortgage sued for foreclosure, and was subsequently allowed to amend his plaint and sue as attorney for the original mortgagee. It was contended that the period of limitation must be reckoned back from the date of the amendment. Sargent, J., observed: "but, though, if this plaint were amended by altering the description of the plaintiff, and making him sue as the attorney of Pestonji Dinsha, there might nominally be a new suit, yet virtually it would still be the same. It would still be, in fact, the suit of this plaintiff. I should be of opinion that no new plaintiff had been introduced within the meaning of the Limitation Act."

Substitution of true representative of deceased debtor after the Statutory period held to bar the suit.
(March 1873.)

(k) In *Kavasji Sorabji v. Barjorji*,⁽²⁾ a plaint was filed before the expiration of the period of limitation under Act 14 of 1859, against persons whom the plaintiff erroneously supposed to be representatives of his deceased debtor. After the expiration of the period, the plaintiff obtained leave to amend his plaint by substituting the true representatives as defendants. It was held that the claim was barred. The principle of the proviso was, under the old law, applied to a case in which the person originally named as defendant was dead at the time of the institution of the suit, and his heirs were made parties after the expiry of the prescribed period. *Sreekishen v. Ramkristo*.⁽³⁾

Suit in which son was added as plaintiff after the period, held barred though suit was filed in time by his mother.
(Feb. 1875.)

(l) In 1864, a Hindu widow, having a minor son, sued, in her own name and on her own behalf, to recover certain immoveable property. The action was brought on a lease which expired in 1854. The defendant denied the lease, and contended that the suit should be dismissed, as it could not be maintained by the widow in her own name. In 1871, the son, who had in the meantime attained his majority in 1865, was made a co-plaintiff on his own application. It was held that the suit was barred, inasmuch as it must, if maintainable, be deemed to

(1) I. L. R., 3 Bom., 312. | (2) Bom., H. C. 10, p. 224.
(3) 10 W. R., 317,

have been instituted in 1871, when the son was made a co-plaintiff, the plaint previously to that time having been in the widow's own name and expressly on her own behalf. *Gopal Kashi v. Ramabai Saheb Patvardhan*.⁽¹⁾

(m) In *Habibullah v. Achaibar Pandey*,⁽²⁾ plaintiff, on the 12th of April, 1880, sued one of two joint-vendees to enforce a right of pre-emption in respect of the sale of a share of an undivided estate under a sale-deed, dated 12th April, 1879. The joint-vendee was the defendant's minor brother, who was brought in as defendant on the 3rd May, 1880. It was held that, inasmuch as the suit as regards the minor was beyond time and as the only relief which could be granted was the invalidation of the joint-sale, such suit, even admitting that it was within time as regards the adult brother, was not maintainable.

Suit against one of two joint vendees for pre-emption, held not maintainable by addition of the other after time.

(n) In *Boydonath Bag v. Grish Chunder Roy*,⁽³⁾ two of four brothers sued for enhanced rent due to their undivided tenure. On the defendants' objection, the other two brothers, after the statutory period had expired, signified by a petition their assent to the suit. It was held by Markby, J., that although the rights of such added parties were absolutely barred, yet the court could proceed to adjudicate upon and declare the rights of the remaining plaintiffs who had originally filed the suit, and that, as the claim for rent was indivisible, the decree in their favor should be for the whole amount.

C. H.
Suit by two of four brothers for rent allowed as claim was indivisible, (June 1877.)

(o) Dissenting from the above decision, the court dismissed, as barred, *Ramsebuk v. Ramlall Koondoo*,⁽⁴⁾ in which two of the sons, out of a joint Mitakshara family consisting of a father and three sons, and the widow and sons of a deceased son, and carrying on business in partnership, sued to recover money due on a hathchitta, dated the 11th December, 1876, the last payment made and entered by the defendant being on the 20th July, 1877. No time was fixed for payment of the money, so that it became payable on the date of the hathchitta. The

C. H. dissenting from the above ruling, dismissed a similar suit as one not maintainable.

(1) 12 Bom., H. C., 17.

(2) I. L. R., 4 All., 145.

(3) I. L. R., 8 Cal., 26.

(4) I. L. R., 6 Cal., 815.

suit was brought on the 19th of July, 1880, and on the defendant's plea of non-joinder, and on the application of the original plaintiffs, the father and the third son were added as plaintiffs after the suit was, as regards them, barred by limitation. It was held that, inasmuch as the original plaintiffs could only enforce their claim in conjunction with the added plaintiffs, the added plaintiffs' claim was barred and the claim of the original plaintiffs was also barred. "In England, since the passing of the Common Law Procedure Act of 1852, the amendment might have been made, if the court thought proper, so as to protect the claim of the plaintiffs from the limitation, because, after the amendment, the suit would be considered as having been commenced by all the plaintiffs at the time when it was first instituted. If the court had reason to believe that all the plaintiffs had not been joined for some improper motive the amendment would be refused, but if it considered that the non-joinder was a *bond fide* mistake, the amendment would be made for the express purpose of protecting the plaintiffs' rights, and of preventing the Limitation Act from working injustice. See *Lakin v. Watson* (2 Cr. & M., 685), *Brown v. Fullerton* (13 M. & W., 556), and cases there cited at p. 556 of the report. But the policy of the Legislature in this country has been to make the Law of Limitation much more strict than in England, and to take away, as far as possible, any discretion from the courts to modify its strictness. The provisions of section 22 of the Limitation Act seem to have been passed with the avowed object of preventing such amendments being made in such a way as to relieve the plaintiffs from limitation; and the effect of those provisions in such a case as the present is to render the amendment virtually useless to the original plaintiffs."

B. H. following the above ruling, rejected a suit by one of four brothers for money due to their father. (Feb. 1881)

(p) In *Kalidas Kevaldas v. Nathu Bhagvan*,⁽¹⁾ plaintiff, who was one of four brothers composing a joint Hindu family, sued in his own sole name to recover a

(1) I. L. R., 7 Bom., 217.

joint-debt due to their deceased father. On the plea of non-joinder, the three brothers, when as regards them the debt became time-barred, represented to the court that their father, before his death, gave the debt to the plaintiff. It was held upon a review of the decisions of the High Courts of Calcutta and Allahabad, that such assent did not obviate the necessity of joining all the proper parties as co-plaintiffs, and that the suit therefore as framed would not lie. Sarjent, C. J., observes, whether this section "should not be amended to meet the case of joint-contractees is worthy of consideration."

(q) *Dular Chand v. Balram Das*,⁽¹⁾ was brought by one of five partners of a firm in his own name on a common cause of action. On the defendant's objection to the non-joinder of the other partners, the plaintiff, on behalf of the other partners, signified their assent to the suit, and the Lower Court, deciding this issue in favor of the plaintiff, rejected the suit on other grounds. The appellant prayed that the other partners may be made parties. The court rejected the suit on the preliminary ground that all the necessary parties were not joined as plaintiffs.

A. H. in appeal rejected for non-joinder a suit by one of five partners.

§ 23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

(a) This section differs from sections 23 and 24-A, Act IX of 1871, the provisions of which relating to "successive breaches of contract", and "continuing nuisance" have been omitted. The Act of 1877 extends to any "continuing wrong independent of contract" and to "continuing breach of contract."

(b) The purchasers of certain land agreed to pay the vendors certain fees annually in respect of such land, and

Non-payment of yearly fee under the sale deed is not "a continuing breach."

(1) I. L. R., 1 All., 453.

that, in default of payment, the vendors should be entitled to the proprietary possession of a certain quantity of such land. The purchasers never paid such fees, and more than 12 years after the 1st default the vendors sued them for possession of such quantity of such land. It was held that there had not been a "continuing breach of contract" within the meaning of section 23 of Act XV of 1877, and that therefore the provisions of that section were not applicable to the suit, and further, that the suit being governed by No. 143, schedule 2 of Act XV of 1877, and more than twelve years having expired from the first breach of such agreement, was barred by limitation. *Bhojraj v. Gulshan Ali*.⁽¹⁾

Obstructing the flow of rain-water through a gutter constitutes a continuing nuisance.

(c) In *Punja Kuvarji v. Bai Kuvar*,⁽²⁾ plaintiffs enjoyed the right of having an egress for his rainwater through a drain in the defendant's land from time immemorial, and for more than twenty years prior to the date of the obstruction by the defendants. The plaintiff more than two years after the date of the obstruction sued the defendants for its removal. It was held that the obstruction complained of constituted a continuing nuisance, and that as cause of action as to it was renewed, *de die in diem*, the plaintiff's claim was saved by the express provision of this section.

Seizure of a well is trespass on real property continuing as such till trespasser's possession comes to an end.

(d) In *Narasimma v. Ragupathi*,⁽³⁾ plaintiff sued on the 9th of February, 1880, for compensation for loss of crops caused by the defendants taking possession of his well in January, 1877. The District Judge on appeal dismissed the suit on the ground that time began to run against the plaintiff from January, 1877. The court observe: "as to damages, the seizure of the well was a trespass on immoveable property, and it continued to be a trespass until the possession of the trespasser came to an end; the limitation for suits for compensation in such a case is three years, and for any damage which accrued within three years before 9th February, 1880, the date on which

(1) I. L. R., 4 All., 493. | (2) I. L. R., 6 Bom., 20.

(3) I. L. R., 6 Mad., 176.

the suit was brought, the respondents would be liable." In a suit in which plaintiff claimed to have a drain closed on the ground that it passed through his land, it was held, that each act of trespass on the plaintiff's land would constitute a fresh cause of action, and the plaintiff would be competent to rely upon the last act of trespass as constituting a cause of action unless the defendant had acquired an indefeasible right of easement by user. *Ramphul Sahoo v. Misree Lall*.⁽¹⁾ In *Jogal Kishore v. Mulchand*,⁽²⁾ it was held, that at any time within twenty years, should injury accrue from the recurring use of an easement to the owner of the servient tenement, a new cause of action arises to the owner of the servient tenement, which he may put in suit within twelve years from its accrual.

Opening a drain on plaintiff's land.

If injury accrue at any time within 20 years from recurring use of an easement, a new cause of action accrues.

(e) In *Ponnusawmi Tevar v. The Collector of Madura*,⁽³⁾ the plaintiff sued to establish his right to an uninterrupted flow of water through a channel which ran into a tank in a village which was the plaintiff's property, and to compel the removal of sluices erected across the said channel by the 1st defendant's predecessor in office, and used for the purpose of diverting the flow of the water. It was held, that the diversion of the water was a continuing injury down to the time of the institution of the suit, and that the plaintiff's suit was not barred. In *Sri Viswambhara v. Sri Saradhi Charana*,⁽⁴⁾ plaintiff sued to recover damages for loss caused during 1862, 1863, and 1864, by defendant's interference with plaintiff's right to the flow of water from a canal. The court observe "for an obstruction to a right to water, plaintiff would be entitled to at least nominal damages; but an obstruction, such as that alleged in the present suit, would be a continuing injury giving rise to a fresh cause of action as fresh damage resulted from it." In *Subramaniya Ayyer v. Ramachandra Rau*,⁽⁵⁾ plaintiff complained of defendant's interference with his right to have the drainage water from his land to flow off in the usual course. It was held that the

Diversion of water is a continuing injury up to the institution of the suit.

Interference with plaintiff's right to the flow of water from a canal.

Interference with right to have drainage water to flow off in the usual course.

(1) 24 W. R., 97.

(2) 7 N.-W. P., H. C. R., 293.

(5) 1 L. R., 1 Mad., 335.

(3) 5 M. H. C. R., 6.

(4) 3 M. H. C. R., 111.

defendant's act was actionable whether special damage had or had not accrued, and that so long as the obstruction was continued, there was a continual cause of action from day to day.

P. C. held that obstruction to the flow of water along an artificial water-course on defendant's land is a continuous act.

(f) *Rajrup Koer v. Abul Hossein*,⁽¹⁾ was a suit for the removal of obstruction to the flow of water along an artificial water course on the defendant's land. Less than 20 years before the suit the defendants had obstructed the flow of water in several places. The Lower Courts differed as to whether some of the obstructions had not been made more than two years before the suit. It was held that such obstructions being continuous acts as to which the cause of action accrued *de die in diem*, Act IX of 1871, schedule 2, part V, clause 31, fixing two years from the date of the obstruction as the period of limitation for obstructing a water course, did not preclude a suit complaining of obstructions though made more than two years preceding the date of the commencement of the suit.

Case where breach of an agreement was held a continuing breach.

(g) In *Imdad Ali v. Nijabad Ali*,⁽²⁾ proprietor of two houses died, leaving a widow and a nephew. On the 18th July, 1875, the widow sold one of the houses for Rupees 300, but was unable to give possession as the nephew held possession of both the houses. On the 16th September, 1875, the widow sued the nephew for her dower and for the houses, and on the 9th December, 1875, they both entered into a compromise by which the nephew was to take for his share the house sold by the widow, while she agreed to take the other house for her share and dower. The widow further agreed to refund to her vendor the Rupees 300 she had received for the house. The widow died without refunding the purchase-money, and on the 23rd July, 1878, the vendee sued the nephew for possession of the house sold, but obtained a decree only for a fourth-share and took possession thereof in July, 1883. The nephew died, and his heirs brought the suit against the heirs of the widow for Rupees 75, value of the $\frac{1}{4}$ share decreed to the vendee. The Lower Court rejected the suit

(1) I. L. R., 6 Cal., 394. | (2) I. L. R., 6 All., 457.

as barred by Article 115. It was held that such breach of the agreement was a continuing breach and had not even yet ceased, and that the suit was not barred by Article 115.

(h) *Rajubalu v. Krishnarav*,⁽¹⁾ was a suit brought in 1872, for damages for breach of the covenants for title contained in a deed dated July, 1865. It was held that the breach of the grantor's covenant, so far as related to his present right to convey, took place on the day the conveyance to the covenantee was executed, viz., 15th July, 1865, and consequently a suit in respect of such breach was barred; but the covenant for quiet possession admitting of a continuing breach was not barred so long as the breach continued, and that of the covenant for further assurance, there had been no breach at all, as such covenant would be broken only by refusal on the part of the covenantor or his representatives to execute a further assurance when required so to do by the covenantee or his representatives.

Breach of covenant for quiet possession is a continuing breach.

(i) In a suit between Mahomedans, when a husband claims as against his wife, restitution of conjugal rights, the relation of husband and wife still subsisting, it was held that the withholding of herself from her husband by the wife is a continuing breach of contract within the meaning of this section. *Ghizni v. Mussammat Mehran* (Punj. Rec., No. 60 of 1879).⁽²⁾

A wife withholding herself from her husband is a continuing breach of contract.

(j) False imprisonment is a continuing cause of action, or rather a fresh cause of action arises from day to day as long as the imprisonment continues; hence, if the imprisonment began more than four years before action, but continued to a time within the four years, the defendant may divide the time and plead the statute to so much of the imprisonment as took place more than four years from the time of action brought. *Coventry v. Apsley*, 2 Salk 420. See *Massey v. Johnson*, 12 East, 67.⁽³⁾ Article 19 of the Limitation Act provides that for a suit for compensa-

English case. False imprisonment is a continuing cause of action.

See Article 19 schedule 2 of the Indian Act.

(1) I. L. R., 2 Bom., 273. | (2) Rivaz's Limitation Act, p. 68.

(3) Darby and Bosanquet, p. 30.

tion for false imprisonment, time runs from the termination of the imprisonment.

Although a party who once recovered damage cannot sue for fresh damage, yet fresh damage and continuance of the wrongful act which caused it would constitute a new cause of action.

This is a case of continuing injury and not continuing damage.

Observations of Williams, J.

In the case of continuing damage fresh damage does not give a new cause of action.

Plaintiff in one case after recovering damage for assault sued again for damage as a piece of his skull came out.

(k) In *Whitehouse v. Fellowes*,⁽¹⁾ the trustees of a turnpike-road converted an open ditch, which used to carry off the water from the road, into a covered drain, placing catchpits with gratings thereon to enable the water to enter the drain. Owing to the insufficiency of such gratings and catchpits, the water, in very wet seasons, instead of running down the ditch as it formerly did before the alterations by the trustees, overflowed the road, and made its way into the adjoining land and injured the colliery of the plaintiffs. It was held, that the trustees were liable for such injury, if they were guilty of negligence in respect of such gratings and catchpits. It was further held, that a fresh damage to the plaintiff's colliery occasioned by the trustees continuing such insufficient gratings and catchpits was a distinct cause of action; and that, therefore, an action brought in respect of it, within three months from the time of such fresh damage, although after more than three months from the first damage, was not defeated by the General Turnpike Act 3, Geo. 4., C. 126, S. 147, which limits the action against such trustees to three months after the fact committed. Williams, J., observes, "I am of opinion that the continuance of the tort on the highway, if accompanied by fresh damage to the plaintiff, constitutes a fresh cause of action, and that an action may be commenced in respect of it within three months from the time such fresh damage occurred. There is no doubt that a fresh damage does not give a cause of action. The authority for that is the case of *Fetter v. Beale* (1 Salk, 11) where the defendant had beaten the plaintiff's head against the ground, and the plaintiff brought an action for assault and battery, and recovered. Afterwards it appeared that a piece of the plaintiff's skull came out, and that the injury was greater than was first supposed, and he accordingly brought a second action. The defendant pleaded the recovery in the former action,

(1) 30 L. J. C. P., p. 305.

and averred it to be for the same assault and battery. To this there was a demurrer, and it was urged for the plaintiff that the subsequent damage was a new matter which could not be given in evidence on the first recovery, and he compared it to the case of a nuisance where every new dropping is a new act; but Holt, C. J., said 'every new dropping is a new nuisance, but here is not a new battery, and in trespass, the grievousness or consequence of the battery is not the ground of the action, but the measure of the damage which the jury must be supposed to have considered at the trial.' Now, in the present case, suppose an action to have been brought after the first flow of water in consequence of negligence by the trustees in the way they kept the catchpits. When that cause came to be tried, the question would be the amount of damages the plaintiff would be entitled to recover. It would surely have been a monstrous thing to have presumed that the trustees meant to persevere in keeping the catchpits in that state, and to have argued that the plaintiff ought to recover damages calculated on the presumption that the trustees would continue the wrong. All that injury could have done would have been to have found the amount of damage the plaintiff had sustained up to the time when the action was brought; and if the defendant should not have discontinued the nuisance, that might have been the subject of a fresh action. The assumption on which the present action is founded is, that the plaintiff has been again damaged by reason of the defendant's continued neglect of duty. Can it be said that it was intended by the Legislature that the plaintiff should have no remedy for this subsequent damage? The true answer, I think, is, that although a party should not be allowed to bring a fresh action merely because there has been a fresh damage, yet when there has been not only a fresh damage, but a continuance of the wrongful act which caused it, that is a new cause of action in respect of which the party may bring his action."

Plaintiff compared his case to the case of a nuisance where every new dropping is a new act.

Holt, C. J., said every new dropping is a new nuisance but in this case there is not a new battery.

The assumption on which the present action is founded is that plaintiff has been damaged again by defendant's continued neglect of duty.

(1) Where the defendant had been exercising a right of fishing in certain water adversely to the plaintiff for

Section 23 cannot operate to prevent the pos-

session of a tree-
passer extin-
guishing own-
er's right under
section 28.

more than 12 years, it was held that a suit by the plaintiff for a declaration that he was entitled to the exclusive right of fishing in such water was barred by limitation. *Parbutty Nath Roy Chowdhry v. Mudho Paroe.*⁽¹⁾ So where the plaintiff claimed a right to a turn of worship of an idol, it was held that the cause of action did not recur as the term of worship came round, but that he must sue within the period of six years computed from his dis-possession. *Gour Mohan Chowdry v. M. Mohan Chowdry.*⁽²⁾

Suit for com-
pensation for
act not action-
able without
special damage.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.

(a.)—*A* owns the surface of a field. *B* owns the sub-soil. *B* digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence.

(b.)—*A* speaks and publishes of *B* slanderous words not action-able in themselves without special damage caused thereby. *C* in consequence refuses to employ *B* as his clerk. The period of limitation in the case of a suit by *B* against *A* for compensation for the slander does not commence till the refusal.

When injury is
complete at the
time of the act,
limitation com-
mences then.
When the act is
not legally in-
jurious till da-
mage occurs
time runs from
damage.

(2) “Although time commences usually to run in a defendant's favour from the time of his wrong-doing, and not from the time of the occurrence to the plaintiff of any consequential damage, yet it is necessary for the truth of this proposition that the wrong-doing should be one for which nominal damages might be immediately recovered. Not every breach of duty creates an individual right of action, and a distinction something similar to that which has been drawn by moralists between duties of perfect

(1) I. L. R., 3 Calc., 276. |

(2) 6 B. L. R., 353.

and imperfect obligation may be observed in duties arising from the law. In this way, a breach of public duty will not inflict any direct immediate wrong on an individual; and neither his right to a remedy, nor his liability to be precluded by time from its prosecution, will commence till he has suffered some actual inconvenience; while it is otherwise, as has been noticed, where there is a private relation between the parties, where the wrong-doing of one at once creates a right of action in the other. In fact, when the injury, however slight, is complete at the time of the act, the statutory period then commences, but when the act is not legally injurious until certain consequences occur, the time commences to run from the consequential damage.”(1)

(b) In *Bonomi v. Backhouse*,⁽²⁾ plaintiffs were owners of an ancient house. The defendant, for more than six years before the commencement of the action, worked some coal mines, 280 yards distance from the house. No actual damage accrued until within the six years. The question was whether the cause of action accrued within the six years. The majority of the Court of Queen's Bench thought it did not. Willes, J., observes “we are not insensible to the consideration, that the holding damage to be essential to the cause of action may extend the time during which persons working minerals and making excavations may be made responsible. But we think that the right which a man has, is to enjoy his own lands in the state and condition in which nature has placed it, and also to use it in such a manner as he thinks fit; subject always to this, that if his mode of using it does damage to his neighbour, he must make compensation. Applying these two principles to the present case, we think that no cause of action accrued for the mere excavation by the defendant in his own land, so long as it caused no damage to the plaintiffs; and that cause of action did accrue when the actual damage first occurred.”

Excavating land for cellars and working coal mines are not in themselves unlawful acts. But if damage ensues to the neighbour cause of action would accrue to him only then.

Observations of Willes, J.

No cause of action accrued for mere excavation.

(1) Banning, p. 271.

(2) 28 L. J. Q. B., 378.

In many instances a man may be in invincible ignorance of the act causing damage, and consequently to deprive him of redress after a period from the date of the act would be harsh. If mere excavation was actionable, whether damage occurred or not, the Jury would have to decide upon prospective damage.

Inconvenience of deciding upon speculative damage.

In a subsequent case a majority of Judges held that prospective damage was recoverable.

Observations of Manisty, J.

Damages resulting from one cause of action must be recovered once for all.

It may be said that plaintiff should only recover actual damage up to

(c) "We should be unwilling to rest our judgment upon mere grounds of policy; but we cannot but observe that a rule of law, or rather the construction of a Statute of Limitations which would deprive a man of redress after the expiration of six years, when the act causing the damage was unknown to him—when, in very many instances, he would be in invincible ignorance of it—would be harsh, and contrary to ordinary principles of law." With reference to the defendant's contention that the action must be brought within six years after the excavation whether any actual damage has occurred or not, the same Judge observed, "The Jury, according to this view, would have therefore to decide upon the speculative question, whether any damage was likely to arise; and it might well be, that in many cases they would, upon the evidence of mineral surveyors and engineers, find no damage was likely to occur, when the most serious injury afterwards might, in fact, occur; and in others, find and give large sums of money for apprehended damage, which, in point of fact, never might arise."

(d) In *Lamb v. Walker*,⁽¹⁾ which was an action for injury to the plaintiff's land and buildings, by removal of lateral support through mining operations carried on by the defendant on his own land adjoining, it was found by a referee to whom the amount of damage was referred, that, in addition to existing damage, there would be future damage to the extent of £150. It was held by the majority of Judges, (Cockburn, C. J., dissenting), that such damage was recoverable in the action.

Manisty, J., observes: "It is a well-settled rule of law that damages resulting from one and the same cause of action must be assessed and recovered once for all. And it seems to me, that in the present case there is but one and the same cause of action, namely, that which I have already mentioned."

"It may be said that it would be more just and equitable in a case like the present that the plaintiff should

(1) 3 Q. B. D., p. 295.

only be entitled to recover the amount of damage actually done to his property up to the time of bringing his action, leaving him to recover subsequent damage, if any, by a subsequent action, or, if need be, by a series of subsequent actions. The same might have been said in many cases in which, however, the contrary principle has for a very long time been, and as I think wisely, acted upon. Take, for instance, the case of the wrongful obstruction of light by means of the erection of a new building lawful in itself. In that case it might be said the plaintiff ought only to be allowed to recover the damage sustained up to the time of the commencement of his action, because, possibly, the obstruction may be removed, and therefore it would be unjust to permit the plaintiff to recover prospective damage unless and until it is actually incurred."

the date of his action and subsequent damages by a series of subsequent actions;

The contrary principle has been for a long time acted upon in many cases;

In the case of obstruction of light by a new building;

"If that principle were adopted, one consequence would be that the Statute of Limitations would cease to be operative: A plaintiff might lie by until after the expiration of six years, without bringing any action, and then not only bring an action for the damage sustained during the period of six years next before action brought, but he would be entitled to bring a series of subsequent actions for the damage subsequently accruing. Again, take the case of slander actionable only by reason of special damage. The speaking of the defamatory word is *damnum absque injuria*, and consequently not actionable without special damage, just as the removal of the necessary support in the present case was *damnum absque injuria*, and not actionable until the plaintiff's property was injured, but I should suppose it would not be suggested that in such a case the plaintiff could only recover the damage actually sustained up to the time of bringing his action, and that for subsequent damage he might bring a subsequent action or a series of subsequent actions. The fact is that the principle hitherto acted upon, namely, that a plaintiff must recover once for all, by one and the same action, all damage past, present, and future, resulting from one and the same cause of action, may not always insure

If plaintiff can only recover actual damage up to the date of his action, the Statute of Limitations would cease to be operative;

In the case of slander it would not be suggested plaintiff could only recover actual damage up to the date of his action, and again sue for subsequent damage;

Though the rule that plaintiff must recover by one suit all damage past, present, and future

resulting from one action, may not always insure perfect justice, it is a whole-some principle. In some exceptional cases change of law might be made; but it is for the Legislature;

And anything more disastrous than allowing series of actions for one cause of action, cannot well be conceived.

Observations of Cockburn, C.J., on the effect of awarding prospective damage.

perfect justice, but as a rule it is, in my opinion, a whole-some principle, and I doubt whether any better could be devised. It may be that in some exceptional cases, such for instance, as injury sustained by a passenger owing to the negligence of the carrier, some useful change might be made in the law. If so, that is a matter for the Legislature. As the law stands, the passenger must recover once for all, because there is only one cause of action, and it seems to me that anything more disastrous than allowing a series of actions to be brought for damage arising from time to time in respect of the same cause of action could not well be conceived. If, in the present case the reversioner must resort to successive actions for injury to his reversion, so must his several tenants for injury to their possession, and the consequence to the defendant would, I should think, be very much worse than that of having the damages assessed once for all in one and the same action."

(g) Cockburn, C. J., dissenting from the majority, was of opinion, that in a case such as *Bonomi v. Backhouse*, "the wrong consists in causing the plaintiff's premises to fall; consequently it extends only as far as the actual damage goes, hence, each fresh damage becomes a fresh wrong, a fresh cause of action." "Can the plaintiff, by bringing his action immediately on the happening of a slight amount of damage, and claiming therein for prospective damage, which it is assumed will happen at some future time, thereby deprive the defendant of his right to prevent such future damage by recourse to artificial means? The law, beyond all question, allows him to avert all liability on account of possible damage in respect of the entire amount of damage which may result from his operations. If, finding that some damage has arisen, possibly contrary to his expectations, he seeks to prevent further mischief, I am at a loss to see on what principle he is to be prevented from taking measures to do so. Yet such would be the effect of such decision.

(h). In *Gillon v. Boddington*,⁽¹⁾ where A by digging

(1) R. and M., 161.

a basin or canal in his own land, caused a stream to flow against his neighbour's wall, and gradually to undermine it, so that at last the wall fell, the period of limitation was held to run from the falling of the wall, and not from the time of the digging of the basin or canal.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Computation of time mentioned in instruments.

Illustrations.

(a).—A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b).—A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

(a) In *Rungo Bujaji v. Bābāji*,⁽¹⁾ plaintiff sued on a note, dated 7th August, 1877, and containing a stipulation to the effect that "in the month of Kartik Shake, 1799, that is to say, in four months, we shall pay in full the principal and interest." The plaint was filed on the 6th December, 1880, in the Court of Small Causes, at Poona. The Judge was of opinion that the claim was barred. On his referring the case to the High Court for its decision, it was held that the period of four months was, for the purpose of ascertaining whether the suit was barred by lapse of time, to be calculated according to the Gregorian Calendar, although the word Kartik will thereby have no effect, and the fourth month would expire in Margashirsha Shudha. In *Alemas Banee v. Mahomed Ruja*,⁽²⁾ a bond, by its terms, stated that money advanced should be re-paid on the 30th Pous, 1288 B. S., and it so happened that, in the year 1283, the month of Pous consisted only of 29 days (the 29th Pous, answering to the 12th January, 1877). It was held, that the suit brought on the 13th January, 1880, when the money had become re-payable on the 13th of January, 1877, was in time.

As to bond bearing Native date, period should be calculated according to the Gregorian Calendar.

There is no saving of cases where lunar months and lunar years were intended by parties.

(1) I. L. R., 6 Bom., 83. | (2) I. L. R., 6 Calo., 239.

In *Nilkanth v. Dattatraya*,⁽¹⁾ it was held that where a bond bears a Native date only, and is made payable after a certain time, that time, whether denoted by the month or the year, is to be computed according to the Gregorian (British) Calendar.

Periods of limitation in other Acts held, should be reckoned according to English calendar, in the absence of any special provision to the contrary.

(b) In *Mahomed Elahee Buksh v. Brojokishore Sen*,⁽²⁾ it was held in accordance with former decisions, that for the purpose of computing the period of limitation prescribed by section 29 of the Beng. Act VIII of 1869, the calculation should be made according to the English Calendar. In *Khasro Mandar v. Premlal*,⁽³⁾ suit was governed by section 27 of Act VIII of 1869, of the Bengal Council. Although Act I of 1868, the General Clauses' Act, expressly referred to Acts passed by the Governor-General in Council, it was held that in the absence of any provision in the Bengal Council Act, the interpretation of "years" and "months" given in Act I of 1868, must be followed. In *Maharajah Jay Mungul Singh v. Lall Rung Pal Singh*,⁽⁴⁾ it was held that the periods of limitation in Limitation Acts should be reckoned according to the English Calendar unless a different intention is expressed. Following the above decision, C. H., in *Saroda Pershad v. Pahali Mohanti*,⁽⁵⁾ held in June, 1884, that the word "months" in section 32 of Act X of 1859 should be computed according to the English Calendar, inasmuch as in that section, or in sections 33, 90, and 93, which provide for limitations, there was nothing to indicate that any other calendar was intended.

(1) I. L. R., 4 Bom., 108.

(3) 9 B. L. R., App., 42.

(2) I. L. R., 4 Calc., 497.

(4) 13 W. R., 183; 4 B. L. R., App., 53.

(5) I. L. R., 10 Calc., 913.

PART IV.

ACQUISITION OF OWNERSHIP BY
POSSESSION.*

26. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

Acquisition of
right to easements.

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or

* Section 3 of Act V of 1882 repeals in the territories of Madras, Coorg and the Central Provinces, sections 26 and 27, and the definition of easement, and provides that in any Act or Regulation all references to the said sections, or to sections 27 and 28 of Act IX of 1871, shall in such territories be read, as made to sections 15 and 16 of Act V of 1882.

Section 3 of Act V of 1882. (See under section 3 page 21.)

Section 15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a

air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if, for the words "twenty years," the words "sixty years" were substituted.

Illustrations.

(a)—A suit is brought in 1883, for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(b)—In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof, and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(c)—In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

Section 16. (See under section 27.)

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a.)—A suit is brought in 1881, for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1860, to 1st January, 1880. The plaintiff is entitled to judgment.

(b.)—In a like suit, also brought in 1881, the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.)—In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

(a) In *Ponnusami Tevar v. The Collector of Madura*, which was decided in October, 1869,⁽¹⁾ it was thought by Sir C. H., Scotland, that no period of enjoyment short of 12 years would confer a right to an easement. His view was based upon an analogy between the acquisition of an easement (which implies a loss to the servient owner) and the limitation period of 12 years after which, through adverse enjoyment, the owner of the property may be debarred from recovering it. Justice Innes was of opinion that in the absence of common law on the subject, user for a shorter period than 12 years, accompanied by cir-

Before Act IX of 1871, M. H. thought 12 years' enjoyment conferred a right to easement.

(1) 5 M. H. C. R., 6.

C. H. also held ^{80.} circumstances indicative of a grant might be sufficient. In the Presidency of Bengal, user, for a period of at least 12 years, was considered necessary to establish a right to easement. *Mohim Chundee v. Chunder Churn*.⁽¹⁾ In *Jay Prokash Singh v. Ameer Ally*,⁽²⁾ Peacock, C. J., held, in 1868, that the English Prescription Act did not apply to the mofussil, and that the plaintiff could not sue to remove the bund if the defendant had exercised the right of having it for a period of 12 years. In the mofussil of the Bombay Presidency, enjoyment without interruption for a period of more than 30 years was required to acquire a right by prescription under Reg. V of 1827, section 1, cl. 1. *Rambhau Bapushet v. Bhai Babushet*⁽³⁾

Bombay Regulation V of 1827, required 30 years' enjoyment in the mofussil.

In the Presidency towns, 20 years' enjoyment was required according to the English Law which prevailed before 2 & 3, Wm. IV c. 71.

Since the above decisions, Act IX of 1871 fixed 20 years.

Anaji Dattushet v. Murushet Bapushet.⁽⁴⁾ In the Presidency towns, 20 years' uninterrupted user was considered necessary to confer a right to an easement by prescription. It was held so by the Bombay High Court in 1862, in *Pranjivan Dass v. Mayaram*,⁽⁵⁾ and in 1871, in *Narotam Bapu v. Ganpatrav Paudurang*.⁽⁶⁾ In *Elliott v. Bhoobun Mohun*,⁽⁷⁾ the Calcutta High Court held, in 1873, that the English Law which prevailed before the passing of the Prescription Act, 2nd and 3rd, William IV, c. 71, being applicable, plaintiffs were required to shew an uninterrupted user of at least 20 years with the acquiescence of the defendants. Since these decisions, the Legislature, in section 27 of Act IX of 1871, fixed 20 years as the period for the acquisition of an easement, but they did not define the term "easement." It has been since defined by section 3 of Act XV of 1877. The right asserted in a claim founded on prescription should be strictly and clearly defined, and cannot be based on rights which are inconsistent. *Rajah Bijoy Keshub Roy v. Abhoy Churn Ghose*.⁽⁸⁾

20 years' appropriation of light and air is necessary to entitle plaintiff to prevent his neighbour from blocking up the aperture. (July 1878.)

(b) In *Sarubaikom Jistmal v. Bapu Narhar Sohoni*,⁽⁹⁾

(1) 10 W. R., p. 452.

(2) 9 W. R., 91.

(3) 2 B. H. C. R., 333.

(4) 2 B. H. C. R., 334.

(9) I. L. R., 2 Bom., 660.

(5) 1 B. H. C. R., p. 148.

(6) 8 B. H. C. R., 69.

(7) 19 W. R., 194.

(8) 16 W. R., 199.

the plaintiff and defendant being owners of two adjoining houses with a common party wall between them, the former placed a window frame in an aperture in an upward extension of his part of the wall which he had erected eight years before suit, and the latter thereupon raised the wall on her side so as to cut off the supply of light and air which the plaintiff used to receive before, and after the placing of the window frame. It was held, that there had been no appropriation of the light and air by the plaintiff for the statutory period of 20 years creating in him a right of easement, and entitling him to relief against the inconvenience sustained by him.

(c) In *Provabutty Dabee v. Mohendro Lall Bose*,⁽¹⁾ it was held, that where a person, who has a right to light from a certain window, opens a new window, or enlarges the old one, the owner of an adjoining house has a right to obstruct the new or enlarged opening, if he can do so without obstructing the old; but if he cannot obstruct the new without obstructing the old, he must submit to the burden.

Defendant can obstruct new or enlarged window if he can do so without obstructing the old one.
(June 1881.)

(d) In *Mathura Das Nandvalabh v. Bai Amthi*,⁽²⁾ plaintiff and defendant were next door neighbours. The plaintiff's backrooms received light and air through apertures ten inches square made in the back wall of the house. Contiguous to this wall was the defendant's ground, upon which he built a shed, and the roof, which was completed in April, 1878, excluded light and air from two of the apertures in the plaintiff's house. The plaintiff sued the defendant for its removal; the defendant contended that he had permitted the opening, and that the plaintiff had not enjoyed light and air as of right. The Lower Appellate Court held that the defendant's tacit acquiescence in the apertures, so long as they did not interfere with her, would not constitute a right such as would interfere with the defendant's ordinary rights of property. It was held that the enjoyment by the plaintiff when it is open and manifest, not furtive or invisible, and when it is not had

Use of apertures admitting light and air when open and manifest, and not furtive or invisible, is enjoyment "as of right."

(1) I. L. R., 7 Calc., 453. | (2) I. L. R., 7 Bom., 522.

in such wise as to involve the admission of any obstructive right in the owner of the servient tenement, is an enjoyment “as of right” within the meaning of this section.

It is sufficient that a building as to which such right is claimed, has assumed the appearance of a dwelling-house, though not completed or used as such for the full period of twenty years. (Dec. 1862.)

(e) In *Pranjivandas Haijivandas v. Mayaram Samaldas*,⁽¹⁾ it was held that to acquire by prescription a right to the uninterrupted access of light and air through the windows of a dwelling-house, it is sufficient that the building, in respect of which the right is claimed, has assumed the appearance and outward aspect of a dwelling-house for more than twenty years before the time of the commencement of the suit, though not completed or used as a dwelling-house for the full period of twenty years before that time. When a dwelling is so far completed as to show an intention to use it as a dwelling-house with certain windows or openings for light and air, from that time it becomes the duty of those who are concerned in preventing a prescriptive right to the access of light and air from arising in respect of such windows to take steps to challenge and hinder the acquisition of such right.

Obstruction of light and air must be material and such that compensation would not give adequate relief. (August 1871.)

(f) Where two houses are held jointly by several owners deriving their title from a common source, and one of such houses enjoys a continuous, as distinguished from an occasional easement over the other, such easement will, upon a partition of the premises, pass to the dominant tenement, both by implication of law, and under the usual general words contained in the deed of partition. When the court is asked to interfere by injunction to restrain the obstruction of light and air to a dominant tenement, the question to be determined is—is the obstruction such as seriously to interfere with the comfort or enjoyment of the owners of the dominant tenement, or such as to cause a material injury to it—an injury which cannot be completely compensated by damages? The court will in such cases interfere, as well by mandatory as by preventive injunction, provided that in the circumstances of the case there is nothing inequitable in putting in force the

(1) 1 B. H. C. R., 148.

former remedy. The court will look not merely to the use to which rooms in a dwelling-house from which light is obstructed are actually put at the time of the obstruction, but also to the use to which they may be put for all reasonable purposes of occupation. It is immaterial whether light is admitted through a window or a door. In case of obstruction, the owner of the dominant tenement is in either case entitled to protection. *Ratanji Hormasji Bottlewalla v. Edalji Hormasji Bottlewalla*.⁽¹⁾

Court will look not merely to the use to which rooms are put at the time of obstruction, but also to all reasonable uses for occupation.

(g) In *Shrinivas Udpirao v. Reid*,⁽²⁾ the plaintiff opened a new window in his house which rendered the defendant's house less private than before. It was held that the plaintiff should not be debarred from improving his own house, though the effect might be, to some extent, prejudicial to his neighbour. In *Komathi v. Gurunada Pillai*,⁽³⁾ it was held by the Madras High Court, that the invasion of privacy by opening windows is not treated by the law as a wrong for which any remedy is given. The Judgment of the Lord Chancellor in *Tapling v. Jones*,⁽⁴⁾ is a clear exposition of the English Law on the subject of the invasion of privacy by opening windows. He observes, "if my adjoining neighbour builds upon his land and opens numerous windows, which look over my gardens or my pleasure grounds, I do not acquire from this act of my neighbour any new or other right than I before possessed. I have simply the same right of building or raising any erection I please on my own land, unless that right has been by some antecedent matter either lost or impaired, and I gain no new or enlarged right by the act of my neighbour." In *Mahomed Abdur Rahim v. Birjusahu*,⁽⁵⁾ defendants having opened certain windows and erected a verandah in their house which commanded a view of the plaintiff's female apartments, the plaintiffs sued them to have the windows closed and

Opening a window cannot be prevented because it makes the neighbour's house less private or affects privacy.

English Law on the subject.

Decision of C.H.

(1) 8 B. H. C. R., O. C., 181. | (3) 3 M. H. C. R., 141.

(2) 9 B. H. C. R., 266. | (4) 11 H. L., 290.

(5) 5 B. L. R., 676.

the verandah removed. It was held, that no such suit was maintainable. This was followed in *Sheikh Golam Ali v. Kazi Mahomed Zahur Alam*,⁽¹⁾ which was a suit to close doors recently opened, because they overlooked the Zenana of the plaintiff. In *Joogul Lal v. Mussumat Jasoda Bebee*,⁽²⁾ a houseowner in a street changed the arrangement or construction of the upper part of his house so that the alteration gave him a wider range of vision than before, but in a manner otherwise consistent with his rights of enjoyment. It was held that no legal right of suit is given to a neighbour living on the other side of the road complaining of loss of privacy.

According to the usage of Gujarat, opening new aperture affecting privacy is an actionable wrong.

(h) In *Manishankar Har Govan v. Trikam Narsi*,⁽³⁾ it was held that in accordance with the usage of Gujarat, a man may not open new doors or windows in his house, or make any new apertures or enlarge old ones in a way which will enable him to over-look those portions of his neighbour's premises which are ordinarily secluded from observation, and so intrude upon his privacy. In *Kuvarji Premchand v. Baijaver*,⁽⁴⁾ it was held that in Gujarat, a householder's right to privacy is not affected by the fact that a public road runs between the dominant and the servient tenements. Where a window opened by the defendant commanded a view not of the plaintiff's private apartments, but of an open court yard outside his house, it was held that there had been no invasion of the plaintiff's privacy which would entitle him to have the window closed according to the customs legally recognised in Gujarat. *Keshav Harkha v. Ganpat Hirachand*.⁽⁵⁾

Opening window commanding a view of plaintiff's open court-yard is not invasion of privacy.

Where plaintiff claimed right of way over land held by Government as lessee of the owner, it was held that to acquire a right of way or other easement under the Indian Act, it is not necessary that user should be known to servient owner.

(i) In *Arzan v. Rakhal Chunder Roy Chowdhery*,⁽⁶⁾ the plaintiff claimed a right of way over a certain land held by Government under a lease from its owner, and the court of first instance and the Lower Appellate Court, though they held that the plaintiff had enjoyed it without interruption for upwards of 20 years, rejected the suit on the ground that a right of way cannot be enjoyed as of

(1) 6 B. L. R., App., 76.

(2) 3 N.-W. P. H. C. R., 311.

(3) 5 B. H. C. R., A. C., 42.

(4) 6 B. H. C. R., A. C. 143.

(5) 8 B. H. C. R., A. C., 87.

(6) I. L. R., 10 Calc., 214.

right, without the servient owner's knowledge. The important question raised in the second appeal was, whether the principles which govern the acquisition of a right of way in England by prescription apply also to the acquisition of such a right under the Indian Limitation Act. A Division Bench, (Garth, C. J., and Prinsep, J), holding that it is not necessary that the enjoyment of the easement should be known to the servient owner, and that in this respect there is a difference between the acquisition of such rights under the Indian Limitation Act, and their acquisition under the English Prescription Act, observe: "the Act, under which rights of way and other easements are now generally acquired in India, has nothing to do with prescription. It is an "Act for the Limitation of Suits and other purposes," and section 26 enables any person to acquire a right of way by a 20 years' user without reference to any grant, express or implied, from the servient owner.

There is difference between acquisition of such rights under this Act and under the English Prescription Act.

"So long as the right of way is enjoyed as an easement peaceably and quietly as of right and without interruption for 20 years by a person claiming right thereto, his right at the end of that time becomes absolute and indefeasible. Nothing is said in the Act as to the knowledge of the servient owner being necessary to the acquisition of the right, and as the right to be acquired is not a prescriptive one, the rule which obtains in England with reference to prescriptive rights seems inapplicable here.

20 years' enjoyment of a way as an easement by a person makes his right absolute.

"Of course, rights of way, as well as other easements, may still be claimed in this country by prescription; (see *Rajrup Koer v. Abul Hossein* :)⁽¹⁾ and when they are so claimed, the principles which apply to their acquisition in England will be equally applicable in this country. But those principles do not necessarily apply to the acquisition of easements under the Limitation Act.

When, however, such rights are claimed in this country by prescription, principles which apply to their acquisition in England would apply.

"And as a proof that this was the view of the Legislature of this country, there is no provision in the Indian Limitation Act corresponding with section 7 of the English

(1) I. L. R., 6 Calc., 394.

Prescription Act, though there is a provision in section 27 which answers to section 8 of the Prescription Act, and which protects under certain conditions the rights of reversioners.

"Peaceably and openly" are introduced probably to prevent acquisition by stealth or contested user.

"It is probable that the words 'peaceably and openly,' which are not in the English Act, have been introduced into the Indian Act for the very purpose of preventing these rights being acquired by stealth or by a constantly contested user, although actual knowledge of the user on the part of the servient owner may not be necessary."

Where plaintiff claimed a right of way over defendant's premises as enjoyed for 50 years, it was held, he should prove enjoyment within 2 years before suit, or prove long enjoyment which would presume grant. (March 1881.)

(j) In *Achul Mahta v. Rajun Mahta*,⁽¹⁾ the plaintiff claimed his right of way over a footpath through the defendant's premises alleging that he had been using it for 50 or 60 years up to September, 1877, when the defendant wrongfully closed it up. The defendant pleaded limitation, alleging that the plaintiff had not enjoyed the easement within two years before the suit. The High Court referred the following issues to the Lower Appellate Court. "Was the right of way in question peaceably, openly, and as of right, used by the plaintiff or those through whom he claims within two years of the institution of the suit? Supposing that it was not so enjoyed, and with reference to the alleged antiquity of the right and the observations of their Lordships of the Privy Council in *Maharani Rajrup Koer v. Syed Abdul Hosain*⁽²⁾ we further direct the following issue. Is there evidence of enjoyment on the part of the plaintiff, or those through whom he claims, of such a character and duration as to justify the presumption of a grant or other legal origin of the plaintiff's right, independent of the provisions of section 26 of the Limitation Act of 1877? In *Juggessur Singh v. Nund Lall Singh*,⁽³⁾ it was held that 20 years of peaceable and open enjoyment without interruption are needed to make a right of user absolute, whether it be a right of way or right of water. The interruption referred to must have occurred within

(1) I. L. R., 6 Calc., 812. | (2) L. R., 7 I. A., 240.
(3) 20 W. R., 283.

the twenty years and must be an obstruction by the act of some person other than the claimant. Glover, J., observed: "the illustration (b), to section 27 shows the meaning of the law to be that there must be an exercise of the right by actual user within two years next before the institution of a suit for recovery. Again, in *Gopee Chand Setia v. Bhoobun Mohun Sen*,⁽¹⁾ which was a suit to establish a right of way, it was held that it is not sufficient for a plaintiff to prove user for 20 years, which ended more than two years next before the institution of the suit; he must show exercise of the right by actual user within such period of two years. The same view was adopted by Mitter, J., in *Baboo Luchmee Pershad Narain Singh v. Tiluckdharee Singh*.⁽²⁾ Where plaintiff sued to establish his right to use a water-way for the rain-water of his roof, and it was found that the roof had fallen more than two years previous to the suit, and the Lower Courts therefore dismissed the claim with reference to illustration (b) of this section, on the ground of non-user for two years preceding the suit, it was held, that plaintiff had not lost his right, as mere non-user of an easement for a time, if the circumstances of the case are not such as to indicate an intentional abandonment of the former right, is not, even if such non-user extend beyond two years, sufficient to destroy that right (*Punj. Rec. No. 62 of 1880*).⁽³⁾ The conflict in the above decisions arose from the difficulty of reconciling the terms of illustration (b) with the last clause of the section. In *Koylash Chunder Ghose v. Sonatun Chung Barooie*,⁽⁴⁾ which was a later case brought to establish right of passage for boats over the defendant's lands when they were flooded, the court held that the section, saying not a word as to any actual user or exercise of the right within two years preceding the suit, such user or exercise of the right is not necessary. (*Vide Note T.*)

(k) In *Charu Surnokar v. Dokouri Chunder Thakoor*,⁽⁵⁾

(1) 23 W. R., 401.

(2) 24 W. R., 295.

(3) *Rivaz's Limitation Act*, pp. 75, 76.

(4) I. L. R., 7 Calc., 182.

(5) I. L. R., 8 Calc., 966.

Glover, J., observed: actual user within 2 years next before suit was necessary. (July 1873.)

C. H. followed it in two subsequent cases.

N.-W. P. H. C. held non-user even for more than 2 years will not destroy the right.

The above conflict arose from the difficulty of reconciling illustration (b) with the last clause of the section.

Garth, C. J., held, user within two years preceding suit is not necessary. (April 1881.)

Right to the use of path-way over plaintiff's land created when both

lands belonged to one person, was held an easement of necessity. Easement may also be acquired by implied grant.

plaintiff sued for an injunction to restrain the defendant from using a path on the plaintiff's land. It appeared that the land held by the plaintiff and defendant had originally belonged to one owner, and that the plaintiff and the defendant had obtained their respective tenements more than 20 years previously. The path had been admittedly made by the original owner, but the plaintiff contended that, when he purchased the land, he had closed the path. This the Munsif disbelieved, and refused the injunction. The District Judge, treating the case as if it fell under section 26 of the Limitation Act, and being of opinion that the defendant had not proved 20 years' peaceable, open, and uninterrupted exercise of the right of way, gave the plaintiff a decree. It was held that the mode of acquiring an easement provided by section 26 of the Limitation Act is not the only way in which an easement may be acquired, but an easement may also be acquired by implied grant. In the present case, the use of the path might be absolutely necessary to the enjoyment of the defendant's tenement, in which case there would be an easement of necessity, or the use of the path, though not absolutely necessary to the enjoyment of the defendant's tenement, might be necessary for its enjoyment in the state in which it was at the time of severance, and in this case, if the easement were apparent and continuous, there would be a presumption that it passed with the defendant's tenement.

If easement were apparent and continuous, there would be a presumption that it passed with defendant's tenement.

Case where discontinuance of user of a lane held to have the effect of preventing the acquisition of the statutory right. (April 1878.)

(1) *Sham Churn Auddy v. Tariney Churn Banerjee*⁽¹⁾ was a suit for a declaration of the plaintiff's right of way over a lane leading from a public road to a door in the plaintiff's house, which lane the defendant who resided at the end of the lane had obstructed so as to prevent access to the plaintiff's house; it appeared that the house in respect of which the easement was claimed belonged in 1855 to one *H C*, during the time of whose occupation there was user of the right of way over the lane to the door until he had the door bricked up. In April, 1865,

(1) I. L. R., 1 Calc., 423

the house was sold by *H C*, and in June, 1867, was conveyed by the purchaser to the plaintiff. From the blocking up of the door until the plaintiff's purchase, no user was proved. The suit was brought in June, 1875, about a month after the erection by the defendant of the obstruction complained of. It was held that the owner of the dominant tenement having, with the intention of preventing the use of the way, created an obstruction of a permanent nature which rendered such use impossible, the way could not be said, during the continuance of such obstruction to have "been openly enjoyed" within the meaning of section 27 of Act IX of 1871, and that, accordingly, though there had been no interruption within the meaning of that section, a right to the way had not been established under the Act.

(m) In *Joy Doorga Dossia v. Juggernath Roy*,⁽¹⁾ plaintiff claimed a right of way over the defendant's land to drive his cows, alleging that for many years they have been driven over them. Macpherson, J., observes, "if they, having driven the cattle over the lands generally,—that is to say, not by any particular path, but straggling promiscuously over the lands,—which is the right claimed by the plaintiff, be held to give the plaintiff a right in all time to come so to drive his cattle, it would be interfering with the lands to such an extent as to make it impossible that they should ever be used for any useful purpose. But a right of way or other easement must not be so large as to extinguish or destroy all the ordinary uses of the servient property. (See *Zumeer Ali*, 1 Weekly Reporter, page 230); and in my opinion no length of time would have given the plaintiff such a right as he claims, namely, a straggling right to the promiscuous use of the whole property for the purpose of driving his cattle over it." In *Gooroo Churn Goon v. Gunga Gobind Chatterjee*,⁽²⁾ it was held that the owner of a piece of land between a village and the public road who allows his neighbour's cows to pass over it on the way to pasture,

A right of way or other easement must not be so large as to destroy all the ordinary uses of the servient property.

Right to drive cattle promiscuously over another's land.

(1) 15 W. R., 295.

(2) 8 W. R., 269.

does not thereby create a right of easement over the land so as to deprive it of all value by rendering its cultivation impossible.

There can be no prescriptive right to injure another, even though such injury has the warrant of ancient user. (July 1873.)

Throwing crucibles in a tank.

Public nuisance

English cases recognising right to polluted water into a stream.

and right for washing rubble and other stuff in working a tin mine.

Plaintiff should prove not merely the right, but the particular route.

(n) In *Sreedhur Dey v. Adoyto Kurmocar*,⁽¹⁾ defendants claimed a prescriptive right of throwing into the plaintiff's tank, the burnt earth of which their crucibles were made. It was held that there could be no prescriptive right in such a case, and that if the defendants persisted in throwing earth into the tank, the plaintiff might suffer greater injury than he has already sustained. In the Municipal Commissioners of the Suburbs of Calcutta *v. Mahomed Ali*,⁽²⁾ which was a case dealt with by a Magistrate under section 310 of the Criminal Procedure Code, (XXV of 1861), it was held that no length of enjoyment can legalise a public nuisance involving actual danger to the health of the community.

"In *Wood v. Sutcliffe*, (2 Sim., N. S., 163), the Vice-Chancellor says: that a manufacturer may acquire a right to pour his polluted water into a stream as against all new comers, so that those below him coming after he has acquired the right may not have the right to complain of what he does to the stream. Thus a right to pollute water may be acquired by 20 years' user. (See *Crossley v. Lightowler*, L. R., 3 Eq. 279; 2 Ch. App., 478; *Baxendale v. McMurray*, L. R., 2 Ch. App., 790.)

A prescription for washing away by means of a stream, the sand, stones, rubble and other stuff which become dislodged or severed in the course of working a tin mine, and using the tin and tin ore, is not unreasonable or indefinite, since it is by implication limited to the necessary working the mine and the quantity of water sent down, and though more stuff may come at one time than at another. (*Carlyon v. Lovering*, 1 H. and N. 797, 800.)⁽³⁾

(o) In *Radhanath Sugracharji v. Baidonath Seal Kabiraj*,⁽⁴⁾ plaintiff sued for a declaration of a right of way over the land of the defendant. It was held, that plaintiff must prove the particular line over which he claimed

(1) 20 W. R., 237.

(2) 7 B. L. R., 499.

(3) Gale, p. 485.

(4) 8 B. L. R., App., 118.

the right, and that mere proof of a right to pass over the land without proving the particular route will not entitle him to a decree. In *Goluck Chunder Chowdhry v. Tarinee Churn Chuckerbutty*,⁽¹⁾ the court observe, a right of way imports *ex vi termini* a right of passing in a particular line, and not the right to vary it at pleasure. This would be an abuse of the right and it might be an inconvenience to the owner of the land charged with the easement.

(p) In *Haridas Nandi v. Jadunath Dutt*,⁽²⁾ it was held, that a right of way over the land of another must be kept up by constant use and that after a discontinuance of such use for a period of six years no suit can be brought to re-establish it. In *Krishna Chandra Chuckerbutty v. Krishna Chandra Banik*,⁽³⁾ it was held that a finding that a right of way had been formerly exercised is not a sufficient finding to indicate the length of time for which the right had been exercised, and is therefore insufficient to prove a right of user. In *Beni Madhab Das v. Ramjay Rokh*,⁽⁴⁾ A had a right of way over B's land. He allowed B to erect a house on the path-way and enjoy it for seven years. He then brought a suit to have the path-way re-opened by pulling down B's house. It was held that A must be taken to have acquiesced in the interruption of his right of way, and his claim was such that a court of equity and good conscience would not enforce. Acquiescence in the sense of mere submission to the interruption of the enjoyment does not destroy or impair an easement. To be effectual for that purpose, it must be attributable to an intention on the part of the owner to abandon the benefit before enjoyed. In *Ponnusawmy Tevar v. The Collector of Madura*.⁽⁵⁾ In *Kesava Pillai v. Peddu Reddy*⁽⁶⁾ a tenant by his lessor's permission erected a dam upon his holding and thereby obstructed the natural flow of the water to other lands of the lessor. It was held, that the mere permission did not amount to a grant, and that there was no implied grant of the right to use

Discontinuance of user of a way held to affect plaintiff's right.

Acquiescence in obstruction.
(August 1868.)

Acquiescence to be effectual must be attributable to an intention to abandon the benefit.

Case where mere permission to erect a dam was held not to amount to a grant.

(1) 4 W. R., 49.

(2) 5 B. L. R., App., 66.

(3) 3 B. L. R., A. C., 211.

(4) 1 B. L. R., A. C. 218.

(5) 5 M. H. C. R., 6.

(6) 1 M. H. C. R., 258.

water so as to derogate from the rights of those through whose lands the stream would otherwise flow. It was further held that the right under the permission might be terminated by revocation of the latter, but that such revocation would only be permitted on the terms of the landlord paying to the tenant the expenses which that permission had led him to incur. Even when the dominant and servient tenements are the property of different persons, a man may license an act in its inception and yet be entitled to relief when the act is found to have injurious consequences which he could not have contemplated at the time of the license.

A man licensing an act in its inception may seek for relief if injurious consequences which he could not have contemplated, arise

Right of easement may be created by a contract.

Plaintiff enjoyed a channel on defendant's land on agreement for many years.

The agreement was held not revocable at pleasure.

Distinction between a mere license and one coupled with the creation of an interest.

(q) In *Krishna v. Rayappa Shanbhaga*,⁽¹⁾ which was a suit to establish a right of water and for damages for interruption of the same, plaintiff and defendant by agreement between them, constructed a dam across a main channel, and from thence a smaller channel was made through the land of the defendant to the plaintiff's land by means of which it was agreed that the plaintiff should be at liberty to irrigate his fields. This agreement was acted upon for a long course of years. It was held that the agreement was not a mere parol license revocable at the pleasure of the defendant, but an agreement which created a right of easement, unlimited in point of time to the use of the water by the plaintiff, and imposed upon the defendant the corresponding duty of allowing the accustomed supply to flow. A mere license differs in its effects from a license coupled with the creation of an interest. The former is revocable, but the latter is subject to the same incidents, and is as binding and irrevocable as any other contract, gift, or grant. The law in this country does not require that any agreement between natives, whether in regard to the transfer or creation of an interest in land, or otherwise, should be in writing; nor does it distinguish between agreements under seal and by parol. The Transfer of Property Act has introduced some change in this respect.

(1) 4 M. H. C. R., 98.

(r) In *Madanmahan Sen v. Chandrakumar Mookerjee*,⁽¹⁾ *G*, the owner of certain property sold it in lots to different persons. The plaintiffs purchased a portion of the property, and obtained from *G* a conveyance, in which the southern boundary of the land purchased by them was stated to be "the land of the said *G*, out of which he has allowed a passage 6 feet broad running almost straight west to east and terminating on another passage leading, &c.;" the deed continued, "which two passages, the said *G* has granted and allowed, and doth hereby grant and allow to" the plaintiffs, "their heirs, representatives, and assigns, and all the other purchasers of the northern portion of the said pieces of land, &c., together also with the right of the two passages for ingress and egress hereinbefore mentioned." In a second deed, conveying another parcel of land to the plaintiffs, *G* said, with reference to the latter passage, "no one shall be able to throw sweepings or filth on the said road, or make it unclean; if any one does at any time act thus, you will deal with him according to the laws in force." The defendant had become possessed of part of the northern portion of the land sold by *G*, and he also owned under a distinct title a house abutting on the lane in dispute, but having no doors opening into it. Shortly before the institution of the present suit, the defendant constructed three doors opening on to the lane, two of which were used for the purpose of cleaning two privies on the defendant's premises, and the third was used by the defendant and his servants as a means of access to the lane. In a suit by plaintiffs, seeking damage for trespass and an injunction against the wrongful user of the lane by the defendant, and praying that he might be ordered to close the three doors, it was held (*per* Couch, C. J., and Markby J.,) overruling the decision of Macpherson, J., that the plaintiffs had not such a property in the soil of the lane as would entitle them to prevent the defendant from making new doors on to the lane and to restrain him from

Suit for trespass and to restrain the opening of doors into a lane over which plaintiff had a right of way.
(July 1872.)

Shortly before suit, defendant opened three doors, and used two for cleaning privies and one as means of access to the lane.

(1) 9 B. L. R., 328.

Defendant was restrained from using door-ways for cleaning privies or in any other manner so as to obstruct the plaintiff.

Right of passage for boats in the rainy season over a channel wholly in another's land, is analogous to an ordinary right of way.

Passage over another's tank to be valid, must be claimed in a particular direction. (March 1881.)

The obligation on the servient owner is that he shall not unreasonably narrow the road or render passing less easy.

To establish such right, actual user within two years previous to suit, is not necessary under this section. (April 1881.)

using the doors already made; they had only a right of way: but an injunction was granted restraining the defendant from using his door-ways for the purpose of cleaning his privies, or in any other manner so as to obstruct the free use by the plaintiffs of the lane.

(s) In *Doorga Churn Dhur v. Kally Coomar Sen*,⁽¹⁾ it was held that a right of passage for boats in the rainy season over a channel, wholly in another man's land, is, in respect of extent, analogous to an ordinary right of way; and the dominant owner cannot complain of the servient owner's narrowing the channel, so long as the latter, by so doing, does not prevent the former from passing and repassing as conveniently as he has always been accustomed to do. A right of passage for boats in the rainy season over another person's tank must be claimed in a particular direction in order to be valid. Garth, C. J., observes, "we believe that the law upon the subject is thus correctly laid down in *Goddard on Easements*." "It may be mentioned here, that a right of way along a private road belonging to another person, does not give the dominant owner a right, that the road shall, in no respect, be altered, or the width decreased; for his right does not entitle him to the use of the whole of the road, unless the whole width of the road is necessary for his purpose; but it is merely a right to pass with the convenience to which he has been accustomed. The right, therefore, merely extends to that portion of the centre of the road which is necessary for the due exercise of the right of passage. The only obligation upon the servient owner is, 'that he shall not unreasonably contract the width of the road, or render the exercise of the right of passing less easy than it was at the time of the grant.'

(t) In *Koylash Chunder Ghose v. Sonatun Chung Barooie*,⁽²⁾ the plaintiffs sued on the 6th of April, 1878, to remove obstruction to a right of way for boats in the rainy season. The defendants admitted the obstruction, but denied the right of way. The plaintiffs proved that the

(1) I. L. R., 7 Calc. 145. | (2) I. L. R., 7 Calc., 132.

right was peaceably and openly enjoyed, and actually used by them claiming title thereto as an easement and as of right without interruption from before 1855 down to November, 1875, since when, no actual user of the way by the plaintiffs had taken place. The Lower Appellate Court dismissed the suit on the ground that the plaintiffs had made no actual use of the way within two years previous to the institution of the suit. It was held, reversing the decision of the court below, that, notwithstanding Act XV of 1877, section 26, illustration (b), actual user within two years previous to the institution of the suit is not necessary in order that the right claimed may be acquired under this section. Illustrations in Acts of the Legislature ought never to be allowed to control the plain meaning of the section to which they are appended, especially when the effect would be to curtail a right which the section in its ordinary sense would confer. Garth, C. J., observes: "The 26th section of the Limitation Act only renders it necessary, as far as we can see, that the *enjoyment of the right* claimed should have continued till within two years before suit. The section says not a word as to any *actual user* or *exercise* of the right within the two years. It is obvious to us, that the enjoyment intended by the section means something very different from actual user. In order to establish the right, the *enjoyment* of it must continue for 20 years; but in the case of discontinuous easements, this does not mean that *actual user* is to continue for the whole period of 20 years. On the contrary, there may be days and weeks and months, during which the right may not be exercised at all, and yet during all those days and weeks and months, the person claiming the right may have been in full enjoyment of it. The easement with which we have to deal in the present case affords a remarkable illustration of this. The right which the plaintiff's claim can only be used by them during the two or three months of the year when the defendants' land is flooded; and if there were a lack of rain, it is probable, that even for 20 or 21 months, the right might not be exercised at all;

Illustrations
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be allowed to
control the
plain meaning
of the section
to which they
are appended.

and yet, so long as the plaintiffs' right was not interfered with whenever they had occasion to use it, their enjoyment must, we conceive, be considered as continuing during all the year round."

"Unless this were so, a person in the plaintiff's position, who could only use his right during a short period of the year, could never gain a prescriptive right at all."

20 years' user can establish right of private ferry and levy tolls. (January 1881.)

(U) In *Parmeshari Proshad Narain Singh v. Mahomed Syud*,⁽¹⁾ the plaintiffs claimed an exclusive right of ferry across a river from their own ghat on the eastern side to the ghat of the defendant on the western side of the river. They claimed not only the right to carry passengers and to take tolls from them, but also to exclude the defendant from interfering with their profits by exercising a similar right of ferry on the western side. It was held, that the right of establishing a private ferry and levying tolls is recognised in British India, and that 20 years is the shortest period within which such a right of ferry can be established by user.

Right to the flow of water through an artificial water course constructed on a neighbour's land, must rest on some grant or arrangement proved or presumed.

(V) In *Ramessur Persad Narain Sing v. Koonj Behari Pattuk*,⁽²⁾ the Privy Council held that the right to water flowing to a man's land through an artificial water-course, constructed on a neighbour's land, must rest on some grant or arrangement, proved, or presumed, from or with the owner of the land from which the water is artificially brought, or on some other legal origin. Such a right may be presumed from the time, manner, and circumstances under which the easement has been enjoyed.

Sir M. E. Smith, observes, right to water of a river flowing in a natural channel through a man's land and right to water of an artificial water-course, do not rest on the same ground.

(W) There is no doubt that the right to the water of a river flowing in a natural channel through a man's land, and the right to water flowing to it through an artificial water-course constructed on his neighbour's land, do not rest on the same principle. In the former case, each successive riparian proprietor, is, *prima facie*, entitled to the unimpeded flow of the water in its natural course, and to its reasonable enjoyment as it passes through his

(1) I. L. R., 6 Calo., 608. | (2) I. L. R., 4 Calo., 633.

land, as a natural incident to his ownership of it. In the latter, any right to the flow of the water must rest on some grant or arrangement, either proved or presumed, from or with the owners of the lands from which the water is artificially brought, or on some other legal origin. The above distinction seems to be now clearly established, for, although it was said by the Court of Queen's Bench, in the case of *Magor v. Chadwick*, (11, A. & E., 571, p. 586), that it was no mis-direction to tell the jury 'that the law of water-courses is the same, whether natural or artificial,' it was held in the subsequent case of *Wood v. Waud*, (3 Exch., 748; S. C., 18; L. J., N. S., Exch., 305,) which appears to their Lordships to be correctly decided, that this expression is to be considered as applicable to the particular case, and that as a general proposition it would be too broad. On the other hand, it appears to their Lordships that the proposition that a right to the use of water flowing through an artificial channel cannot be presumed from the time, manner, and circumstances of its enjoyment, is equally too broad and untenable.

Each successive proprietor is entitled to unimpeded flow of water in a natural stream.

'It was said by the court, in *Wood v. Waud*. We entirely concur with Lord Denman, C. J., that the proposition that a water-course, of whatever antiquity, and in whatever degree enjoyed by numerous persons, cannot be enjoyed so as to confer a right to the use of the water, if proved to have been originally artificial, is quite indefensible; but, on the other hand, the general proposition, that under all circumstances, the right to water-courses, arising from enjoyment, is the same, whether they be natural or artificial, cannot possibly be sustained. The right to artificial water-courses as against the party creating them surely must depend upon the character of the water-course, whether it be of a permanent or temporary nature, and upon the circumstances under which it is created. The enjoyment for 20 years of a stream diverted or penned up by permanent embankments clearly stands upon a different footing from the enjoyment of a

Right of property to an artificial water-course depends on its character and the circumstances under which it was created.

flow of water originating in the mode of occupation, or alteration of a person's property, and presumably of a temporary character, and liable to variations.'

In a case which occurred soon after this decision—*Greatrex v. Hayward*, (8 Exch., 291)—Baron Parke shortly states the principle thus. 'The right of the party to an artificial water-course, as against the party creating it, must depend upon the character of the water-course and the circumstances under which it was created.'

Long enjoyment held to refer to legal origin and long user to support presumption of grant or agreement creating easement independently of the Act. (July 1880.)

(X) In *Rajrup Koer v. Abul Hossein*,⁽¹⁾ more than 20 years, and possibly 50 or 60, before the suit, the plaintiff's ancestors and predecessors in estate had constructed and used a *pain*, or artificial water-course, on the defendant's land, making compensation to them. The *pain*, by a channel at one part of its course contributed to the water in a *tal*, or reservoir, belonging to the defendants; and by a channel at another part, took the water which overflowed from the *tal*, after the defendants had used as much of the water therein as they required. Less than 20 years before the suit, the defendants, without authority, obstructed the flow of water along the *pain* in several places. The courts below differed as to whether some of these obstructions had not been made more than two years before the suit, the rest having been made within that period. It was held, that the provisions of Act IX of 1871, a remedial Act and neither prohibitory nor exhaustive, did not exclude, or interfere with the acquirement of rights otherwise than under them. A title might be acquired under that Act by a person having no other right at all; but it did not exclude, or interfere with other titles and modes of acquiring easements. And section 27, by allowing a user of 20 years, if exercised until within two years of suit under the conditions prescribed, to give, without more, a title, did not prevent proof of an easement founded on another title independently of the Act. Such a long enjoyment as the plaintiff had proved should be referred to a legal origin, and the long user of the *pain* and of the superfluous

Title may be acquired under the Act by a person having no other right, but it did not exclude other titles and modes of acquiring easements.

(1) I. L. R., 6 Cal., 394.

water of the *tal*, afforded evidence, giving rise to a presumption that a grant, or an agreement, had been made, creating an easement. Although, on the assumption that some of the obstructions in question had existed for more than two years before the suit, the plaintiff might not have shown a right under Act IX of 1871, section 27, yet he did not require its aid.

(y) In *Arni Jagirdar v. Secretary of State for India*,⁽¹⁾ the plaintiff claimed a right to the uninterrupted flow of water as a hereditary and customary right. The District Judge, referring to section 27, dismissed the suit because it was a suit to establish a right in the nature of an easement, and there had been no user for the two years next preceding the suit. A Division Bench, (Kindersley and Muttusami Ayyar, J. J.,) reversing the decision in January, 1880, held that the plaintiff has not claimed any statutory right, and that the right claimed may exist independently of the provision of section 27, and remanded the suit. In this they followed the ruling of the Privy Council in the case of *Maharani Rajrup Koer v. Syed Abdul Hossein*,⁽²⁾ in which their Lordships, reversing the decision of the Calcutta High Court, which dismissed the suit on the ground that the plaintiff had not come into court within two years from the date of infringement of his right, observed that Act IX of 1871 contained two sets of provisions distinct from each other; one relating to the limitation of suits, the other enacting a mode of acquiring ownership by possession or enjoyment, and that the object of the last mentioned part of the statute, was to make more easy the establishment of rights of this description, but that the statute was remedial and neither prohibitory nor exhaustive. In *Kurupam Zamindar v. Merangi Zamindar*,⁽³⁾ the plaintiff sued to establish his customary right to erect a dam across a stream. In the second appeal it was contended that if the easement claimed was not by grant, it can only be claimed by prescription, and under the

M. H.
Suit to recover a hereditary and customary right to flow of water, will lie within 12 years from the date of cause of action. (Jany. 1880)
District Judge rejected the suit on the ground of non-user within two years preceding the suit.

M. H. remanded the suit on the ground that plaintiff had not claimed the statutory right.

The statute is remedial and neither prohibitory nor exhaustive.

Another Madras case.

(1) I. L. R., 5 Mad., 226. (2) L. R., 7, I. A., 240.

(3) I. L. R., 5 Mad., 253.

Limitation Act the suit was barred. The court held that there was nothing in this Act XV of 1877 to prevent a person from suing to establish his right to an easement acquired under the law in force prior to that Act, and that the provisions of section 4 of the Act apply only to the periods named in the second schedule. The above decision was followed in *Punja Kuvarji v. Bai Kuvar*.⁽¹⁾

B. H. also held so.

Superior riparian proprietor's right to drain water in not an easement within the meaning of Act IX of 1871.

(2) In *Subramaniya Ayyar v. Ramachandra Row*,⁽²⁾ the plaintiffs have lands in a village. South-east of these lands, and running south, is the stream *P*, along the banks of which the plaintiffs' lands lie. At a point on the east side of this, another stream (the one in dispute) branches off, running west at right angles to the stream *P*. Plaintiffs have lands on the banks of this stream also. They are therefore, as regards these two streams, riparian proprietors. It is found that the accustomed course of things was for the water from the lands of plaintiffs to drain into the stream *P*, and for the stream, about which the contention is, to receive such water as might fall into it from the stream *P*, and to flow onward without obstruction. Defendants, however, obstructed the flow of the stream, and thus forced back the water and obstructed the drainage of plaintiffs' lands to the west of the stream *P*. A lower riparian proprietor can only justify an act of this kind if he has acquired an easement to do it. But defendants have not asserted or attempted to establish a right of easement to infringe upon the plaintiffs' natural right of property by obstructing the natural flow of the stream and keeping water standing upon plaintiffs' land. Such an act is an interference with a right of property which the plaintiffs, riparian proprietors, have to the accustomed flow of the stream, and is actionable whether special damage has or has not accrued, (*Wood v. Waud* 3 Exch., 748, 773) because the injury to the right imports a damage. The action lies equally for continuing as for creating a nuisance, and so long as the obstruction is continued, there is a con-

Lower riparian proprietor blocking up the stream, could justify it only if they had acquired an easement to do it.

(1) I. L. R., 6 Bom., 20. | (2) I. L. R., 1 Mad., 335.

tinual cause of action from day to day. (*Battishill v. Reid*, 18 C. B., 696 L. J., 25 C., page 290.) It is part of the defendants' case that the flow of the stream is obstructed by them.

(2-a) In *Kristna Ayyan v. Vencatachella Mudali*,⁽¹⁾ the plaintiffs, as shareholders in and heads of the villages of Ariyur and Kuvirikudi, sued for an injunction directing the defendants to close an irrigation channel which was opened in 1869 and to remove the sluice. It appeared that a channel called Kaduvai had, by means of a branch, for very many years supplied the plaintiff's village with water. The village of Partical, of which the 1st defendant was Mirasidar, up to the date of the opening of the new channel, had received its supply from the Mallattar channel. The supply from this was insufficient, and the 2nd defendant, the Superintending Engineer, (representing Government) designed a new channel from the Kaduvai to supplement the deficiency of the Mallattar. The water of the Kaduvai was diverted into the new channel at a point above the point of divergence of the branch channel from the Kaduvai to the plaintiffs' village. The relief was prayed for in the court of first instance on the ground that the supply by the Kaduvai had never been sufficient for the wants of the village and that the new channel must necessarily cause a still further deficiency. The Civil Judge found that the plaintiffs had sustained no loss by the opening of the new channel, and dismissed the suit. On appeal, it was contended; first, the plaintiffs had an absolute right to the uninterrupted flow of all the water in the Kaduvai channel without subtraction or diminution by the defendants or by the Government represented by the 2nd defendant, and that any diminution, though not causing loss, was an invasion of their rights; second, that if they had not such absolute right, they had a right to a supply of water for the necessary purposes of irrigation, and otherwise for their village, and that the possibility of loss at some future time, arising from a possible wrongful

Government, as proprietor of a channel, have right to distribute the water in the channel for public benefit, subject to limited use by plaintiffs and other villages in the same position as plaintiffs.

Plaintiffs claimed absolute right to the flow of all the water without any diminution by Government.

(1) 7 M. H. C. R., 60.

It was held they had no such extensive and exclusive right as they contended for.

diminution of the water to their detriment through the new sluice and channel, entitled them to the relief claimed. Upon the first point, it was held that the plaintiffs had not the extensive and exclusive right to the water contended for by them, but that their right was limited to the beneficial enjoyment of the water for the irrigation and other necessary purposes of their tenancies as heretofore enjoyed. Also that the Government, as proprietor of the Kaduvai channel and water in it, had, subject to the above limited use by the plaintiffs and other villages in the same position as the plaintiffs, a right to distribute the water of the Kaduvai channel for the benefit of the public. Upon the second point, it was held that no ground existed for granting an injunction, as no right of the plaintiffs had been invaded, no damage had accrued, and no case of prospective damage had been made out.

Case where plaintiff claimed prescriptive right to throw back water on defendants' land till it drained into the area of a tank.

It was held there was no object over which such right could be acquired.

(2-b) The tank used for the irrigation of the plaintiffs' village was supplied in part by rain water falling on the lands of the village occupied by defendants 9 to 17, and the bund of the tank used formerly to throw back the water so flowing into the tank on to the lands of defendants, where it remained till gradually drawn off into the area of the tank. Defendants 9 to 17, through the agency of the Government, relieved themselves of this inconvenience by making a work for draining off the water so periodically thrown back upon their land. A channel was also constructed for conducting a supply of water to the plaintiffs' tank. Plaintiffs, however, claimed to have the former state of things restored, on the ground that they had a prescriptive right to throw back the water on to defendants' lands and to keep it there till required for use. It was held that there was no object over which a right could be acquired. *Robinson v. Ayya Krishnamachariyar*.⁽¹⁾ In *Becharam Chowdhry v. Puhubnathjha*,⁽²⁾ it was held, that no proprietor can lawfully pen back the water of a stream by erecting a bund

(1) 7 M. H. C. B., 37.

(2) 2 B. L. R., App., 53.

upon his own land, so as to inundate the land of his neighbour without his license and consent.

(2-c) In *F. H. Holloway v. Mahomad Ali*,⁽¹⁾ it was held that a co-sharer in landed property has no right to do anything which alters the condition of the joint-property without the consent of the other co-sharers. To build a factory on such property, only upon a title derived from one co-sharer without the consent of the others, involves an infringement of the rights of those co-sharers, and this infringement involves an injury.

A co-sharer has no right to alter the condition of joint-property without the consent of his co-sharers. (July 1871.)

(2-d) In *Bissambur Shaha v. Shib Chunder Shaha*,⁽²⁾ it was held that section 27 of Act IX of 1871 does not apply to a suit to restrain one co-sharer in a joint property from appropriating to his own particular use a portion of such property without the consent of other co-sharers.

S 27 of Act IX of 1871, held inapplicable to a suit to restrain one co-sharer from appropriating joint-property to his own use without other co-sharers' consent (July 1874.)

(2-e) In *Mussamut Amjudee Begum v. Syud Ahmed Hossein*,⁽³⁾ it was held that where a right of user of a drain or passage is incidental to a house, that right is not affected by the owner of the house letting the house to a tenant. If the court find the plaintiff to possess a right to the user, it may be exercised at all times, and by any person who may be placed in the shoes of the plaintiffs in regard to the property in question.

Right of user of a drain or passage incidental to a house, is not affected by letting it to a tenant. (Dec. 1868.)

(2-f) In *Huree Madhub Lahiree v. Hem Chunder Gossamee*,⁽⁴⁾ it was held that, the rule that the right to easements goes with the property when sold by the owner himself, applies also when the property is sold by the court in execution of a decree against him. The reason for the rule as to easements going with the property is that the disposition of the property by the owner is supposed to have been made with reference to the best way of selling the property, and realizing the full value of it is to sell it with such rights as the owner thought should be attached to particular parts of it.

Right to easement goes with the property whether sold by the owner or by court. (Sept. 1874.)

(2-g) In *Loseby v. Carr*⁽⁵⁾ the drains of certain houses

Such right to go with property, must have existed at the time of sale.

(1) 16 W. R., 140.

(3) 6. W. R., 814.

(2) 22 W. R., 286.

(4) 22 W. R., 522.

(5) 2 Ind. Law, J. 338.

had not been used up to the date of the conveyance of the houses to the plaintiffs. It was held that the right to drain into the main drains of defendant's house was not in existence at the date, and that, therefore, it did not pass to the plaintiffs by the conveyance to him by the original proprietor.

Plaintiff sued to remove defendant's roof projecting over his land and compel him to receive upon his roof the rain-water of plaintiff's new roof.

(2-h) In *Mohanlal Jechand v. Amratlal Bechardas*⁽¹⁾ the plaintiff and defendant were owners respectively of two adjoining houses having a space between them belonging to the plaintiff. The roof of the defendant's house, built more than 30 years previously, projected over a part of this space. The plaintiff built a new story to his house with a roof overhanging the roof of the defendant's house, and under an alleged custom of the country (Ahmedabad) claimed a right to remove a part of the defendant's roof which projected over his (plaintiff's) land. He also sued to establish his right to an easement as against the defendant and to compel him to receive upon the roof of his house the rain-water which flowed from the newly erected roof of the plaintiff. It was held, with regard to the former claim, that if the enjoyment by the defendant were considered as possession by him of the space occupied by his projecting roof, the Limitation Act extinguished the plaintiff's right to sue, and if such enjoyment were to be regarded as a mere easement, then the uninterrupted user of more than 30 years vested in the defendant a proprietary right to the same.

B. H. held right to easement could only be acquired either by contract or prescription.

Held further, with regard to the plaintiff's claim to an easement, that the plaintiff could only have acquired such easement either by contract or prescription, on neither of which he relied. No custom can be admitted to over-ride the provisions of the Limitation Act.

Plaintiff having immemorial user to drain rain-water through defendant's drain, did not require the aid of this section.

(2-i) In *Punja Kuvarji v. Bai Kuvar*,⁽²⁾ in which plaintiffs and defendants were owners of two contiguous buildings, the plaintiff, on the 31st June, 1879, alleging that his rain-water had had egress through the defendants drain from time immemorial, sued the defendants to

(1) I. L. R., 3 Bom., 174. | (2) I. L. R., 6 Bom., 20.

remove the obstruction they placed on the 23rd June, 1876. The defendant pleaded that the plaintiff not having enjoyed his easement within two years of the suit, the claim was barred by this section. Melvill, J., observes "immemorial user must be referred to a legal origin, i.e., either to a lost grant, or to an agreement between the predecessors in title of the parties." And inasmuch as the obstruction constituted a continuing nuisance, the plaintiff's claim was not barred by the Limitation Act, but on the contrary was saved by section 23.

(2-j) In *Akilandammal v. S. Venkatachala Mudali*,⁽¹⁾ plaintiff and defendants, occupants of neighbouring houses, were joint tenants of the party-wall. Defendants unroofed their house, raised the wall, and placed beams on it to rebuild their house. The Lower Appellate Court found, that, in consequence of this alteration, the rain from the defendants' house descended upon plaintiff's verandah and caused damage to plaintiff, and decreed that defendants should restore the wall to its former height, and remove the beams placed on it. It was held on special appeal, that taking the finding to be that the alteration created, "*stillicidium*" where it did not exist before, or that it rendered more burdensome an existent *servitus stillicidii*, it would be very dangerous to hold that every trifling excess in the exercise of a servitude should justify the pulling down of the building creating the excess, and that in the present case, the damages should be assessed and awarded, and the injunction to remove the roof of the house and reduce the wall be made conditional upon the defendant not removing the cause of the nuisance. In such a case the measure of damages is the amount which will induce the defendant to abate the nuisance.

In suit in respect of defendant raising his roof so as to shoot rain-water to plaintiff's adjoining house, it was held, every trifling excess in the exercise of a servitude would not justify pulling down building.

(2-k) In *Askar v. Ram Manik Roy*,⁽²⁾ it was held that to constitute a right by prescription, the possession must have been as of right. Mere permissive possession cannot be the basis of right of prescription. In *Mahomed*

Mere permissive possession cannot create a right of easement.

(1) 6 M. H. C. R., 112. | (2) 5 B. L. R., App., 12.

Long uninterrupted user raises a presumption that user was of right.	<p><i>Ali v. Jugal Ram Chandra</i>,⁽¹⁾ it was held that, where a claim to a right of way is supported by evidence of user only, the court must satisfy itself whether or not the user was founded on actual right. The guiding principle being, that open user of another's land for the purposes of a road or path-way, if continued without interruption for a long time and not attributable to permission or sufferance, induces the presumption that the user was of right. In <i>Shaikh Mahomed Ansur v. Shaikh Sefatoolah</i>,⁽²⁾ it was held in July, 1874, that a right of user over a path-way may be established notwithstanding that it passes over waste-land. A temporary interruption, such as during the rainy season, cannot affect a right of user. Kemp, J., observes, that if a right of user over a path-way cannot be established where it passes over waste-land, the right of user over almost every path-way in the mofussil would be lost, inasmuch as almost every path-way lies over waste-land. In <i>Imambundee Begum v. Sheo Dyal Ram</i>,⁽³⁾ it was held in August, 1870, that a right of way may be created either by grant, or by immemorial custom or by necessity, and it is necessary for a party seeking to establish a right of this kind to prove its existence, and that it is ancient and has been exercised without interruption. No specific time is sufficient to establish a right of user. The determination of the existence of the right is a question depending on the evidence in each case, the right being inferred from the evidence. In <i>Poorno Chunder Chatterjee v. Shurut Chunder Bhutta-charjee</i>,⁽⁴⁾ it was held, that where a party has exercised the right of passage of his surplus tank-water over the land of another openly and uninterruptedly year by year for upwards of 20 years, a presumption arises that he has obtained the easement as of right. In <i>Mohun Lall v. Sheik Noor Ahmud</i>,⁽⁵⁾ a piece of land had been used from time immemorial by the inhabitants of a mohulla for the purpose of burying their dead. It was held that</p>
Right to foot-path.	
May be established over waste-land.	
Observations of Kemp, J.	
Such may be created by grant, or by immemorial custom or by necessity.	
Right to drain surplus tank-water over another's land.	
Right to a burial ground.	

(1) 5 B. L. R., App., 84. | (3) 14 W. R., 199.
 (2) 22 W. R., 340. | (4) 24 W. R., 228.
 (5) 1 N.-W. P. H. C. R., 202.

such use excluded any claim to exclusive possession by the Zemindar which interferes with that use. In *Narayan Visaji v. Lakshuman Bapuji*,⁽¹⁾ the defendants entered on land as tenants of a Mirasdar on terms which they could not prove, but held it at a uniform rent for three generations and for more than 50 years. It was held that the defendant in the absence of any special agreement to the contrary had not acquired by prescription a right of permanent tenancy. Whatever right of permanent tenancy a tenant may, by prescription, acquire as against an Inamdar or a Khot, it would be contrary to the custom of the country and to the nature of miras tenure, to hold that he could acquire such a right as against a Mirasdar.

B. H.
A Mirasdar's tenant holding for 50 years on payment of one uniform rent does not acquire a prescriptive right.

(2-1) In *Venkata Reddy v. Lister*,⁽²⁾ the plaintiffs, who were ryots under the Government, brought the suit to restrain the defendants, the Agents of the Government and others from so altering a calingula as to diminish the quantity of water which the plaintiffs were entitled to receive for the irrigation of their lands, and the plaintiffs alleged that the supply of water had been materially diminished by reason of the acts of the defendants. The only ground upon which the plaintiffs' claim was put, was that they had received the water for a long time. The District Court held that the Government were authorized to regulate the distribution of water in such cases. It was held on regular appeal (*per* Holloway, J.), that no legal right was shown by the plaintiffs which could have been violated by the defendants, and that if such right were established, there was nothing to show that a decree for damages would not have been the proper remedy and (*per* Innes, J.) that the evidence did not show any diminution of the supply of water below the quantity to which the plaintiffs were entitled.

Suit to restrain Government from diminishing water on the ground that plaintiff had received the water for a long time.

Holloway, J., held, no legal right which could have been violated was shown.

Innes, J., held diminution of supply of water was not shown.

(2-m) In *Morgan v. Kirby*,⁽³⁾ plaintiff sought a right to the uninterrupted flow of water in a permanent

Plaintiff claimed exclusive right to uninterrupted flow of water throughout the length of an artificial stream.

(1) 10 B. H. C. R., 324. | (2) 7 M. H. C. R., 342.

(3) 2 Ind. Jurist, 818.

Plaintiff taking a block of Government land had opened the channel through Government waste-land and then obtained Government lease before defendant took up a portion of such land.

It was held that the right was a continuous easement which passes by implication of law.

Observations of Erle, J.

Upon severance of tenements, easements of necessity or continuous easement will pass by implication, but easement used from time to time will pass only by express language of the owner.

artificial stream and further to the exclusive right to use the water throughout the length of the stream; the plaintiff, William Lee Kirby, was the proprietor of a tea estate called Dansandle, on the Nilghiri Hills. The facts of the case were as follow: Mr. H. D. Rae got possession of the Dansandle estate in the year 1860, for the cultivation of tea, and subsequently received a grant of the Estate from Government, in the year 1865. Between 60 and 65, Mr. Rae opened the channel in dispute which carries water from a stream to the Dansandle Estate and passes through Government waste-land and the Sholoor Estate. The Sholoor Estate came into possession of a certain Mrs. Rae, through whom the defendant claims, in or about 1869, and in 1874 was formally conveyed to her successor by a grant. At the time of the first grant under which the plaintiff claims, the channel ran only through Government land until it entered his Estate. It was held, that the right claimed in a flowing stream running from the lessor's and through the lessee's tenements which existed as a flowing stream prior to the lease, and which was made expressly for the purpose of the tenement leased, is undoubtedly a continuous easement requiring no express language to pass it, but which passes by implication of law.

“To use the language of Erle J., in *Polden v. Bastard* (L. R., 1 Q. B., 156) which was approved of in *Watts v. Kelson*—‘there is a distinction between easements, such as a right of way or easements, used from time to time, and easements of necessity, or continuous easements. The case recognizes this distinction, and it is clear law that upon a severance of tenements easements used as of necessity, or in their nature continuous, will pass by implication of law without any words of grant: but with regard to easements, which are used from time to time only, they do not pass unless the owner by appropriate language shows an intention that they should pass.’ The right now claimed, a right in a flowing stream running from the lessor's and through the lessee's

tenements, which existed as a flowing stream prior to the lease, and which was made expressly for the purposes of the tenement leased to Mr. Rae, is undoubtedly a continuous easement requiring no express language to pass it, but which passes by implication of law.

“Assuming thus that a right arises to this easement by implication of law, what is the extent of it ?

What is the extent of the right passed ?

“It is clear, that Rae, in going upon the waste-land and cutting a channel through a considerable portion of it, including that portion of the property which was ultimately leased to him in 1865, acquired no right in the land which at, and after, the date of his lease continued to be Government waste-land, or to that portion of the channel passing through such part of the Government waste-land.

Plaintiff acquired no right to that portion of the channel cut in the Government waste-land.

“If his act was not permitted, it was a trespass. If it was permitted there is no room for inferring that it was not a mere license to dig a channel to conduct the water to the ground which the Government had agreed to lease to him. There is no correspondence forthcoming to show precisely which of these legal aspects the Act bore. But in neither case could Mr. Rae have acquired any right to the water flowing in such portion of the channel as is within the portion of Government waste which he was not authorized to occupy. When, then, the Government leased the property, what did Mr. Rae acquire ? He acquired for the term of the lease the lands described in the lease including the area occupied by the channel and its bed, and a right to the use of the flowing water within the awambit of the property leased to him. Had there existed at the time of the grant any particular purpose for which the water had been and was intended to be used, that user (had and to be had) might be a test of the user granted ? But there was at the date of the lease no special purpose to which the water had been applied, and from the circumstances a larger right cannot be inferred, than that Mr. Rae was entitled by the grant to a reasonable use of the water, *i.e.*, to use it and pass it on.

If his act was unauthorised it was trespass, if it was permitted it was a mere license to dig channel to conduct water to land which Government had agreed to lease him.

By Government lease, plaintiff acquired land, right to the use of flowing water and the area occupied by the channel and its bed.

He was entitled to a reasonable use of the water.

Subsequent Government lease of land above and lower down the stream, was subject to the plaintiff's right to the use of the flowing water in his own land.

"The land above and lower down the stream which was afterwards leased by Government to the person whom defendant now represents was necessarily granted subject to this right of plaintiff to the use of the flowing water in his own ground. This right imports that the flow of the water shall not be interrupted, and defendant is not entitled to interrupt it. But he may use it as it flows through his grounds. Each is entitled to a reasonable use of the flowing water."

A Jalkar or right of fishing was not an easement within section 27 of Act IX of 1871, but it is an easement within section 26 of Act XV of 1877, which by its interpretation clause defines an easement. (January 1878)

(2-n) In *Parbutty Nath Roy Chowdhry v. Mudho Paro*,⁽¹⁾ which was a suit governed by Act IX of 1871, it was held that a Jalkar was not an easement within the meaning of section 27 of Act IX of 1871, but is an interest in immoveable property within the meaning of schedule 2, Article 145 of that Act, corresponding to Article 144 of the Act of 1877. Where the defendant had been exercising a right of fishing in certain water, adversely to the plaintiff, for more than 12 years, it was held that a suit by the plaintiff for a declaration that he was entitled to the exclusive right of fishing in such water, was barred by limitation. A Jalkar is the right to take the profit of a river, lake, or other water on a particular estate or tract of country. When this case was decided by the Lower Appellate Court, the Act of 1877 had not been passed. In *Juggobundhoo Shaha v. Promothonath Roy*⁽²⁾ it was held in January, 1879, that the right of occupancy which accrues to tenants who have occupied or cultivated land for 12 years or upwards, does not arise in respect of the right called Jalkar or fishery. That is a right which may be let out by Ijaradars under the landlord, and may be enjoyed under them so long as their Ijara continues, but is liable to be determined at the expiration of the Ijara.

C. H. held, that right of occupancy accruing in the case of land, does not arise in respect of Jalkar. (January 1879.)

Prescriptive right of fishery is an easement which may be claimed, though claimant does not allege enjoyment of any

(2-o) In *Chundee Churn Roy v. Shib Chunder Munda*,⁽³⁾ plaintiff claimed a prescriptive right of fishery, and the District Munsiff finding enjoyment of the right for

(1) I. L. R., 3 Calc., 276. | (2) I. L. R., 4 Calc., 767.

(3) I. L. R., 5 Calc., 945.

upwards of 20 years gave him a decree. The Lower Appellate Court rejected the suit on the ground that it was not a case of an easement as there was admittedly no dominant tenement. It was held that a prescriptive right of fishery is an 'easement' as defined by section 3 of this Act, and may be claimed by any one who can prove a 'user' of it,—that is to say, that he has of right claimed and enjoyed it without interruption for a period of 20 years, although he does not allege, and cannot prove that he is, or was, in the possession, enjoyment, or occupation of any dominant tenement. White, J, observes: "The legal meaning of 'land' is not only dry land, but also land covered by water; and I see no reason for holding that the word 'land,' as used in section 3, bears other than the legal meaning which ordinarily attaches to the word. Taking 'land' to have this meaning, fish may properly be said to grow or subsist upon it.

dominant tenement.
(April 1880.)

Land means also land covered by water.

"Again, section 27 of the Act, which contains a proviso applicable to the whole doctrine of the acquisition of easements by possession as laid down in the previous section, expressly mentions water, as well as land, and as the word 'easement' has the extended meaning given to it by the interpretation clause, I think that, if there was any doubt on the subject, the language of the proviso makes it clear that the profit arising from water as well as from land was in the contemplation of the Legislature. It would be attributing a singular oversight to the Legislature if we were to suppose that when dealing with '*profits a prendre*,' it intended to omit a right of fishery, which is of the most common classes of property enjoyed in this presidency."

An easement under this section embraces what in English Law is called '*a profit a prendre*,' that is to say, right to enjoy profit in another's land.

"It is true, as the Judge says, that the right claimed by the plaintiff is not a right appurtenant, but a right in gross; still '*a profit a prendre*,' which is the technical name of the right claimed by the plaintiff, is a right recognized by the law, and may be established by the very same sort of evidence as is used to establish either '*a profits a prendre*' appurtenant, or an easement in the ordinary sense of the word."

To constitute prescriptive right of fishery under this section, user by ascertained persons should be proved.
(Dec. 1882.)

(2-p) *Lutchmeeput Singh v. Sadaulla Nushyo*,⁽¹⁾ was a suit to restrain the defendants from fishing in certain bhils, which admittedly belonged to the plaintiff's zemindari. It appeared that the plaintiff had let out some of the bhils to Ijaradars who had sued the defendants for the price of fish taken by them from the bhils, and that the suit had been dismissed on the ground that the defendants, in common with other inhabitants of the villages in the zemindari, had acquired a prescriptive right to fish in the bhils. The defendants contended that they had been in possession of the bhils for more than twelve years, and that they had a prescriptive right to fish therein under a custom according to which all the inhabitants of the zemindari had the right of fishing. No defined and ascertained persons were proved to have been in continuous possession of the fishery right in the bhils. It was held that the mere fact that the defendants had trespassed and had misappropriated fish, did not amount to a dispossession of the plaintiff. It was further held that no prescriptive right of fishery had been acquired under this section of the Limitation Act, and that the custom alleged could not, on the ground that it was unreasonable, be treated as valid.

Fishery rights in tidal navigable rivers, must be derived from the Crown and established by clear evidence. Presumption is against any such right.
(May 1878.)

(2-q) In *Prosunno Coomar Sircar v. Ram Coomar Parooey*,⁽²⁾ Markby, J., observes, that any private right of fishery in a tidal navigable river, "must be derived from the Crown, if it exists at all, is, I think, a matter which is beyond dispute; and I think it also beyond dispute that any such right as this must be established by very clear evidence indeed, and that the presumption would be against any such private right. There is a still further doubt whether such a right as this can be created." In this case it was held that a mere recital in quinquennial papers that a person is the owner of Jalkar rights in a zemindari, permanently settled with him by Government, is not sufficient to give to such person a right of fishery in a public navigable river; any right

A mere recital in a quinquennial paper that a person is the owner of Jalkar is not sufficient.

(1) I. L. R., 9 Cal., 698. | (2) I. L. R., 4 Cal., 53.

granted under such word "Jalkar" would be perfectly satisfied if construed to apply exclusively to a right to fish within enclosed water, such as a jheel. In *Baban Mayacha v. Nagu Shravucha*,⁽¹⁾ rights of the Crown and of the public in the waters and the subjacent soil of the sea have been discussed. The right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. That right may, in certain portions of the sea, be regulated by local custom. Members of the public, exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and not so as to impede others from doing the same; and conduct which prevents another from a fair exercise of his equal right, if injury thereby results to him, is actionable. The facts of the case are shortly the following,—plaintiffs and defendants are fishermen. The plaintiffs affirmed that according to the custom of their trade they had been erecting for years their fishing-stakes annually opposite to the village of Yarangul, at a distance of between two and three miles from the coast, those of the defendants being to the north of and about 600 feet from their own; that in 1872, the defendants in addition to their customary stakes, wrongfully erected other stakes to the south, at a distance of only 120 feet from the plaintiffs', and that they have thereby wrongfully disturbed the plaintiffs in the enjoyment of their right to fish. The defendants denying the alleged custom, claimed to be entitled to erect their fishing-stakes and nets in any part of the sea; they further alleged that the plaintiffs had no exclusive right to fish in any part of the sea. The former suit between the parties had been rejected on the ground that the courts had no jurisdiction, the subject of the suit being situated below low-water-mark, and therefore beyond the limits of the court's jurisdiction. Westropp, C. J., while allowing the trial of the suit on the merits, observes: "The customs of the whale

Right to fish in sea is common and is not subject of property.

Local custom may regulate the right in certain portions of the sea. One exercising right so as to prevent another from exercising his equal right is actionable.

The facts of the case relating to stake-fishing.

Observations of Westropp, C. J., on the principle of the recognition of custom as regulating sea fishing.

(1) I. L. R., 2 Bom., 19.

fisheries would not afford much or any assistance in such a case as the present, where the mode of fishing and the fish are so different. But the principle of the recognition of custom as regulating sea-fishing is valuable. The remarks of Lord Mansfield, quoted by Chambre, J., are especially so, and very applicable here. If there be not some usage, we are at a loss to conceive how difficulties in conducting the system of stake-fishing, which prevails along the Malabar Coast, are not of much more frequent occurrence than they are, for it is very clear that too great proximity of the stakes to each other would be disastrous to the trade, costing much money, as those stakes (which are often of very considerable length) and the fixing of them do. It can scarcely be that the fishermen along the coast have not some understanding amongst themselves as to what is a fair and proper distance at which the rows of stakes should be fixed from each other. The expense and trouble of frequently raising the stakes, and refixing them elsewhere, whenever any person chooses to lay down a new row near existing stakes, would be too intolerable to be long submitted to. The system of stake-fishing along this coast is very ancient. In the map of Bombay, attached to Fryer's Travels, published A. D., 1698, fishing-stakes are marked as existing in the same locality in which some are still planted. It has not been contended that the plaintiff's stakes interfere with navigation, and the system is too long established, and permitted as one of the most ordinary modes of sea-fishing, to be regarded with the jealousy with which stake-fishing is viewed by the English Law, which deems stake-fishing a private mode of fishing inconsistent with a common fishery. (Hall's Sea Shore, pp. 50—51, 2nd ed.) Moreover, the stakes are alleged to be shifted at particular seasons, and cannot be regarded as giving a title to the parts of the soil in which they are from time to time planted, as Lord Hale seemed to think was the case in England, (*de Jure Maris*, Harg. L. T. Hall's Sea Shore App., pp. 15—16, 2nd ed.) from which opinion Mr. Hall expresses his dissent. (Hall's sea shore, p. 55, 2nd ed.)

The system of stake-fishing along the Malabar Coast is very ancient.

English Law deems stake-fishing a private mode of fishing inconsistent with common fishery.

(2-r) In *Doe d. Seebristko v. The East India Company*,⁽¹⁾ it would appear that Her Majesty's Privy Council were of opinion that the beds of navigable tidal rivers in British India are vested in the State. In *Chunder Jaleah v. Ramchurn Mookerjee*,⁽²⁾ it was held in March, 1871, that the right of fishing in a navigable river does not belong to the public, nor is the Government prohibited by any law from granting to individuals the exclusive right of fishing in such a river. Prescriptive rights are founded on the presumption of a grant from long continued, uninterrupted user and enjoyment as of right. In *Bagram v. the Collector of Bullooa*,⁽³⁾ although the plaintiff established his right to a private fishing in certain tidal and navigable rivers, the principles laid down in the above two cases were adopted and approved. In *Reg v. Kasiya Rama*,⁽⁴⁾ the court regarded the sea and its subjacent soil within the ordinary territorial limit, at least around British India, as vested in the Sovereign, but held that the use of it for the purposes of navigation and fishing belonged *communis juris* to her subjects, at least so far as it had not been otherwise appropriated by the Sovereign; and West, J., in speaking of the prerogatives of the Crown in India, in this respect, said: "The English Law on this subject may be gathered from *Blundell v. Catterall*, (5 B. and Ald. 268); *Benest v. Pipon*, (1 Knapp, P. O. C. 60); *Malcomson v. O'Dea*, (10 H. L. Ca. 593); Sir H. Constable's case, (5 Rep., p. 105 b.); and Butler's note to Coke on Littleton, section 440, in which Lord Hale's *Treatises De Jure Maris* and *de Portibus Maris* are abundantly quoted. These authorities support both the ownership by the Crown of the soil under the sea, and the proposition that the subjects of the Crown 'have also by common right a liberty of fishing in the sea, and in its creeks or arms, as a public common of piscary.' 'Yet, in some cases the King may enjoy a property exclusive of their common of piscary. He also may grant it to a subject, and conse-

Indian cases on the right of fishing in navigable tidal rivers and seas.

Observations of West, J., on the prerogatives of the Crown in India in this respect.

(1) 6 Moore's L. A., 26.

(2) 15 W. R., 212.

(3) 1 Cal., W. R. for 64, 248.

(4) 8 B. H. C. R., Crown cases, 88.

quently a subject may be entitled to it by prescription.' (Hale de J. M., p. 11.) The Sovereign's rights are as great under the Hindu and Muhammadan systems as under the English; but without a minute examination of these, it is sufficient to say that by the acquisition of India as a dependency, the Crown of Great Britain necessarily became empowered to exercise its prerogatives and enjoy its *jura regalia* in this country, and on its coasts, subject always to the Legislative Control of Parliament (Campbell v. Hall, Cowp. 204.) These are involved in the very idea of English Sovereignty. I am not aware that in any case they have been so used as to exclude any subject in this country from fishing in any part of the sea. No grant of a fishery in the present case has been set up either as directly proved or as to be inferred from prescriptive enjoyment. The complainants and the applicants alike must rest on their common right of fishing in the sea; and a permission in favor of one or the other party by the villagers of Yerangal, as given without title, could confer none upon either."

Right of fishing in fresh rivers of what kind soever do belong to the owners of the soil adjacent.

(2-s) The law is thus laid down in Hale, *de Jure Maris*, ch. 1, p. 1:—"Fresh rivers of what kind soever do of common right belong to the owners of the soil adjacent; so that the owners of the one side have of common right the property of the soil, and consequently the right of fishing, *usque filum aquæ*; and the owners of the other side the right of soil or ownership and fishing unto the *filum aquæ* on their side; and, if a man be owner of the land on both sides, in common presumption he is owner of the whole river, and hath the right of fishing according to the extent of his land in length. With this agrees the common experience."

There can be no public right of fishing in non-tidal waters, even where they are to some extent navigable rivers.

(2-t) In *Pearce v. Scotcher*,⁽¹⁾ Grove, J., observes: "The question is not whether the river Dee at the spot in question is more or less navigable, but whether the spot at which the respondent claims the right to fish is within the flow and reflow of the tide." In *Murphy v. Ryan* (2

(1) 9 Q. B. D., 162.

Ir. C. L. Rep., 143) it was held that the public cannot acquire by immemorial usage any right of fishing in a river in which, though it be navigable, the tide does not ebb and flow; and that the word "navigable," used in a legal sense as applied to a river in which the soil *primd facie* belongs to the Crown, and the fishing to the public, imports that the river is one in which the tide ebbs and flows. Willes, J., delivering the opinion of the Judges in *Malcolmson v. O'Dea* (10. H. L. Cas. 619) says: "The soil of all navigable rivers, like the Shannon, so far as the tide flows and reflows, is *primd facie* in the Crown, and the right of fishing *primd facie* in the public."

(2-u) In *Ponnusawmi Tevar v. The Collector of Madura*,⁽¹⁾ the Collector pleaded that the river Vaigay and the space occupied by the channel in the suit, being State property, the Government had full power to regulate the distribution of water from rivers and channels constructed or maintained at the public expense. Scotland, C. J., observes: "the arbitrary power claimed for the Government in the 9th para. of the 1st defendant's written statement has been rightly held by the Civil Judge not to be maintainable. However lawful the exercise of such a power may be in regulating the distribution of water amongst ryotwary villages held immediately of the Government, or to the lands of proprietors or their tenants, whose enjoyment of it is simply permissive, there can be no doubt that the right to an easement in the flow of water through an artificial water-course is as valid against the Government as it is against a private owner of land."

Section 17 of Act XIV of 1859 provided against the application of that Act to any public property or right, or to any suit for any public claim, but allowed such suits to be governed by the Law of Limitation in force at the time of the passing of that Act. Such provisions are not to be found in Acts IX of 1871 and XV of 1877, which, however, by Articles 150 and 149, provide for a limitation

"Navigable" in legal sense as applied to a river in which soil belongs to the Crown imports that the tide ebbs and flows.

Can easements be acquired against Government or Sovereign by statutory prescription in the same way as against private individuals?

Scotland, C. J., held that the arbitrary power claimed was not maintainable.

It has been assumed in the Acts of 1871 and 1877, that easements might be acquired against Government.

(1) 5 M. H. C. R., p. 6.

of 60 years for "any suit by or on behalf of the Secretary of State for India in Council." From this it would appear to have been assumed in these Acts, that easements might be acquired against Government by statutory prescription in the same way as they are acquired against private individuals. In the Indian Easement Act V of 1882, section 15, para. 2, of explanation 4, expressly provides that when the property over which a right is claimed under this section belongs to Government, this section shall be read as if, for the words "twenty years," the words "sixty years" were substituted.

English case holding that grant from the Crown may be presumed.

(2-V) In *Good Title, Parker v. Baldwin*,⁽¹⁾ which was a suit to recover possession of a cottage and a small piece of land adjoining, it was held that possession of Crownland commencing at least 55 years ago by encroachment on the Crown in the time of the lessor of the plaintiff's father, maintained by the father till his death, nineteen years ago, and afterwards continued for two years by his widow, when the defendant obtained the possession, would be sufficient evidence for the Jury to presume a grant from the Crown to the lessor's father if the Crown were capable of making such a grant,

A private individual drawing yearly payment from Government for more than 30 years, does not acquire prescriptive right against Government in Bombay, under Regulation V of 1837.

(2-W) A prescriptive right to have a yearly payment made by Government to a private individual, cannot be acquired by reason of a continued series of voluntary payments made to him by Government, extending over a period of more than 30 years. Thus, where Government paid a yearly sum of Rs. 32-4-6 to a chirda hakdar, by whom no services in return were rendered from the year 1818 to 1860, and then discontinued such payment to the heir of the last holder, it was held that such yearly payments gave the hakdar no prescriptive rights against Government. The *Collector of Surat v. Daji Jogi*.⁽²⁾ Where an allowance by Government is neither incidental to hereditary office nor a charge upon an immoveable property, and is not supported by a grant from Government,

(1) 11 East, 438. | (2) 8 B. H. C. R., A. C., 166.

the enjoyment of it for 30 years does not create a prescriptive title to its continuance under Regulation V of 1827, section 1, cl. 1. The Government of Bombay *v.* Gossami Shri Girdharlaji.⁽¹⁾

(2-x) In *Desai Kalyanraya v. The Government of Bombay*,⁽²⁾ plaintiff's ancestors had enjoyed an allowance during four successive generations for a period extending over more than a century. The legal presumption in the absence of the original grant, is that such grant was hereditary. The allowance having been continued by the British Government to the plaintiff's grandfather for the same reasons for which a village (admitted to be held on hereditary tenure) had been continued, and having been paid to the plaintiff's grandfather up to his decease, and afterwards, as a matter-of-course, to the plaintiff's father, it was held that the enjoyment of the plaintiff's grandfather and father was proprietary enjoyment, and that as this enjoyment had continued uninterruptedly for more than 30 years under Regulation V of 1827, section 1, a statutory and indefeasible title to the allowance had been acquired.

Case where prescriptive right was allowed against Government in Bombay, under Regulation V of 1827.

(2-y) In the *Collector of Kheda v. Hari Shankar Tikam*,⁽³⁾ a charitable grant in connection with a temple was proved to have been enjoyed by the incumbent, and those under whom he held in regular succession for more than 80 years. It was held that the grantee had acquired a right of property in it under Regulation V of 1827, section 1, by Warden, J., independently of the origin or nature of the grant, by Gibbs, J., in the absence of its being shown to have been a personal grant, and by the conduct of Government in paying it to several generations in succession.

A charitable grant enjoyed for more than 80 years was held to confer a right of property under the Bombay Regulation V of 1827, section 1.

(1) 9 B. H. C. R., 222.

(2) 5 B. H. C. R., A. C., p. 1.

(3) 5 B. H. C. R., A. C., 23.

Exclusion in favor of, reversioner of, servient tenement.

* 27. Provided that, when any land or water upon, over, or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over *B*'s land. *A* proves that he has enjoyed the right for 25

* Section 3 of the Indian Easement Act (V of 1882), repeals in the territories of Madras, Coorg and Central Provinces, to which it extends, the definition of Easement in the interpretation clause and also section 26 and 27 of this Act (XV of 1877) and provides that all references in any Act or Regulation to the said two sections, and to sections 27 and 28 of Act IX of 1871, shall in such territories be read as made to sections 15 and 16 of Act V of 1882.

Sections 3 and 4—see under section 3, page 21.

Section 15—see under section 26, page 213.

Section 16. Provided that, when any land upon, over, or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of 20 years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the sued land.

Illustration.

A sues for a declaration that he is entitled to a right of way over *B*'s land, *A* proves that he has enjoyed the right for twenty-five years; but *B* shows that during ten of these years *C* had a life interest in the land; that on *C*'s death, *B* became entitled to the land; and that within two years after *C*'s death he contested *A*'s claim to the right. The suit must be dismissed, as *A*, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

years; but *B* shows that during ten of these years *C*, a Hindu widow, had a life-interest in the land, that on *C*'s death *B* became entitled to the land, and that within two years after *C*'s death he contested *A*'s claim to the right. The suit must be dismissed, as *A*, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

The corresponding section 28 of Act IX of 1871, expressly exempted from its operation right of easement to the access and use of light and air; but this section (27) omits the exception and makes its provisions applicable to all easements which have been enjoyed or derived upon, over or from any land or water.

Exception of easement of light and air in Act IX of 1871 omitted in XV of 1877.

(a) "Prescription implies a grant; the user by which a prescriptive right is gained is only evidence of a previous grant, 'and, therefore, in order that such user may confer an easement, it follows that the owner of the servient tenement must have known that such an easement was being enjoyed, and also have been in a position to interfere with and obstruct its exercise, had he been so disposed. *Contra non valentem agere non currit prescriptio.*' (See Gale on Easements, last edition, page 189.) It was presumably upon this principle that by the 7th section of the English Act, the II and III, William IV, C. 71, the time during which an infant, an insane person, or a married woman is the owner of the servient tenement is excluded from the period during which a prescriptive right is in course of acquisition.

Sec. 7 of the English Act II and III, William IV, C. 71 excludes the time during which an infant, an insane person, or a married woman is the owner of the servient tenement.

(b) "But there seems to be an important difference between the English and the Indian Law in this respect. The English Act II and III, William IV, C. 71, was passed expressly 'for shortening the time of prescription in certain cases.' Its object was to remove the difficulties which had previously existed of establishing easements by proof of immemorial user. But the Act did not alter in any way the nature of the right to be acquired, and, therefore, the conditions which were generally necessary before the Act to the acquisition of prescriptive rights are still necessary to their acquisition under the Act, though they may be gained by a shorter period of enjoyment.

There seems to be an important difference between the English and the Indian Act.

English Act simply shortened the period without altering the conditions necessary before the Act for the acquisition of prescriptive rights.

But the Indian Act enables a person to acquire a right of way without reference to any grant, express or implied.

Conditional exclusion in favor of reversioner of servient heritage.

Effect of the exclusion.

(c) "But the Act under which rights of way and other easements are now generally acquired in India has nothing to do with prescription. It is 'an Act for the limitation of suits and other purposes,' and section 26 enables any person to acquire a right of way by a 20 years' user without reference to any grant, express or implied, from the servient owner." *Arzan v. Rakhal*.⁽¹⁾

(d) "But, under section 27, Act XV of 1877 and section 16, Act V of 1882, if the servient heritage has not been in the possession of the full owner, but has been under a lease for a term exceeding three years, or has been subject to an interest for life, the time during which such lease or interest has continued is *conditionally* excluded from the computation of the period,—that is, *provided* the person entitled to the servient heritage on the determination of such term or interest resists the claim within three years next after such determination. It is only under this provision that two periods of valid enjoyment, separated by a period of invalid enjoyment, may be *tacked together* to make up the required enjoyment for 20 years. The period of continuous enjoyment, partly valid and partly invalid, may, in this case, extend back to a time which is *more* than $(20 + 2)$ 22 years before the suit. And here the *express* provision of the law introduces an exception to the rule which requires a valid enjoyment for 20 years ending within two years *next* before the institution of the suit." (Gale, 184 ; Tudor, 191 ; Goddard, 134, 135.)

(e) "The effect of this provision is not to *unite* two *discontinuous* periods of valid enjoyment, but to *extend* the period of *continuous* enjoyment by so long a time as the term or life-interest continues. (*per* Parke, B., in *Onley v. Gardiner*, 4 M. and W., 500.) Where the lessor or reversioner of the servient heritage resists the claim within the time allowed, the claimant must show 20 years' valid enjoyment either *wholly* before the beginning of the term or life-interest, if such term or interest subsisted at the *commencement* of the two years next before

(1) I. L. R., 10 Calc., 217.

the suit, or *partly before and partly after*, if such term or interest ended *more* than two years before the suit. (See Goddard, 134, 135.) Evidence of user for 15 years before the commencement of the term or life-estate, user, during the term or life-estate, and user for five years after the term or life-estate, continuously down to within two years of the suit, would be sufficient to establish the right. But non-enjoyment during the term or life-estate would prevent the two periods of valid enjoyment from being tacked together. The time excluded from the computation is excluded for the benefit of the lessor or reversioner, and not for the benefit of the claimant. The latter must show valid enjoyment for 20 years, besides uninterrupted enjoyment during the time which has to be excluded." (See *Clayton v. Corby*, 2 Q. B., 813; *Pye v. Munford*, 11 Q. B., 675; *Gale*, 185. Interruption by the termor or life-tenant, or any other person, even during the time which has to be *excluded* from the computation of the prescriptive period, prevents the acquisition of the right.)⁽¹⁾

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Extinguishment of right to property.

(a) Act XIV of 1859 contained no provision for the extinction of right after the Statutory period, and consequently up to the introduction of Act IX of 1871, the Statute of Limitation was supposed to bar the remedy, but not extinguish the right. An express law of positive prescription was attempted to be introduced by Sir James Colvill in 1859, and by Sir James FitzJames Stephen in 1871; but Act XIV of 1859, and Act IX of 1871 were passed only after the clauses relating to positive prescription had been expunged from the bills as introduced.

The law of extinctive prescription was for the first time introduced by Act IX of 1871.

(b) By Section 29, of Act IX of 1871, it was provided for the first time that at the expiration of the Statutory

It first applied only to land or hereditary office.

(1) *Mitra's Limitation Act*, p.p. 429-430.

Act XV of 1877 extended it to any property.

No express provision for transfer of right to adverse holder.

Even under the English Statute the law is the same as under the Indian Act.

Effect of the section is to execute a conveyance to the party whose possession is a bar.

period for a suit for possession of "land or hereditary office," the right thereto shall be extinguished. Section 28 of Act XV of 1877, extinguished such right to "any property." This section (28) would seem to extend the doctrine of extinction to property other than land; but there is no express provision for transferring the right to the adverse holder.

(C) It was not until the 32nd year of Henry VIII, as to real actions, and the 21st year of James I, as to personal actions, that the English people obtained Statutes which fixed certain periods of limitation "both for the time present and for all times to come." The Statute of James I, (1623), which applied to actions for ejectment as well as to purely personal actions on torts and simple contracts, barred the remedy, but did not extinguish the right. The subsequent Statute of William IV, (1834), extinguished the right as to real property after 20 years' adverse possession, but it did not even in that limited class of cases expressly transfer the right to the adverse holder. The 37 and 38 Vict., c. 57, which came into operation in 1879, reduces the period of limitation to 12 years.

"The 34th section (III and IV, Will. IV, c. 27), extinguishes the title of a claimant at the same time as his remedy is barred, and he is from that time an entire stranger to the estate, and his title to the land cannot by re-entry after that time be re-vested by means of the doctrine of remitter. (*Brassington v. Llewellyn*, 27 L. J., Ex. 297).

It has been said that the effect of the statute is to execute a conveyance to the party whose possession is a bar, and that by its own force it not only extinguishes the right of the former rightful owner, but transfers the legal fee simple to the party in possession. (*Per Lord St. Leonards*, *Scott v. Nixon*, 3 Dru. and War. 407; and see *Incorporated Society v. Richards*, 1 Dru. and War., 289). It is apprehended, however, that it may more strictly be said that its operation in giving a title is negative; it extinguishes the right and title of the dispossessed

owner, and leaves the occupant with a title gained by the fact of possession, and resting on the infirmity of the right of others to eject him. (See *Dixon v. Gayfere*, 17 Beav., 421).⁽¹⁾

(d) *Gunga Gobind Mundul v. The Collector of the 24-Pergunahs*,⁽²⁾ which was a case disposed of with reference to the Law of Limitation that existed prior to 1859, first established the principle, that where a suit for possession of land is barred by a Statute of Limitation, the right is extinct. The principle of this decision has been frequently applied to cases governed by Act XIV of 1859. In this case, P. C., held in March, 1867, that where the claim to land in the 24-Pergunahs in possession of another is barred by the 12 years' prescription, provided by Beng. Reg. III of 1793, section 14, his title is extinguished; and although a party to a suit in which the Government claims the land, he cannot avail himself of the Government's right of prescription of 60 years to resume and assess the land, on the footing of the relation of landlord and tenant between himself and the Government. In *Brindaban Chunder Roy v. Tarachand Bundopadhya*,⁽³⁾ which was a case governed by Act XIV of 1859, Markby, J., observes: "It has been laid down by the Privy Council, in the case of *Gunga Gobind Mundul v. The Collector of the 24-Pergunahs* (11 Moore's I. A., 345, sec. 360 and 363) that 'the law has established a limitation of 12 years; after that time it declares not simply that the remedy is barred, but that the title is extinct in favor of the possessor.' And in an earlier passage they say, that the right to 'sue for dispossession belongs to the owner of the lands encroached upon, and if he suffers his right to be barred by the Law of Limitation, the practical effect is the extinction of his title in favor of the party in possession.' It also appears to me to be an accepted doctrine in our courts that, if a party who has been 12 years out of possession, and whose suit is therefore barred, should

Even before Act XIV of 1859, P. C., held that after Statutory period not only the remedy is barred, but the title is extinct in favor of the possessor.

No remitter to a right for which the party had no remedy by action at all.

(1) Darby and Bosanquet, pp. 388-389.

(2) 11 Moore's I. A., 345. | (3) 11 B. L. E., 237.

again get into possession, he is not (to use an English phrase) remitted to his old title; our courts adopting as pointed out by Sir Lawrence Peel, in *Sibchunder Doss v. Sibkissen Bonnerjee* (1 Boul, Rep. 70, see. 79), the English rule that there is no remitter to a right for which the party had no remedy by action at all. This decision was quoted and approved of by Loch and Mitter, J.J., in *Raja Baradakant Roy Bahadur v. Prankrishna Paroi*, (3 B. L. R. A. C., 343) and the principle here laid down has been applied exactly in the same way to the English Statute of Limitations (see *Brassington v. Llewellyn*, 27 L. J., Exch., 297.)”

Land taken by Government, by executive power after right to sue was barred, was recovered by the party disposed by suit.

(e) Where the Government has lost its right to sue, it will not be permitted to put itself in possession by an exertion of executive power.

The Government having a claim to land in Bengal (Chittagong) which was not capable of being enforced by suit, by reason of the cause of action having arisen previous to 1765, (Reg. III of 1793, sec. 14) which was at that time the utmost period of limitation in Bengal, took forcible possession of the land in 1800. The persons dispossessed sued Government in 1804, and recovered the land by a decree of the *Sudder Dewany Adawlut*.⁽¹⁾

Uninterrupted possession for more than 30 years before Act IX of 1871, held to create prescriptive title under Regulation V of 1827, Bombay, as against plaintiff suing for share.

(f) In *Sitaram Vasudev v. Khanderav Bal Krishna*⁽²⁾ plaintiff sued, in 1873, for his share in certain ancestral property in the possession of the defendant, and alleged that the latter had been united with him in estate. He however admitted that he had lived separate from the defendant for 40 years previously to the institution of the suit, and that he had not during that period received any portion of the profits of the ancestral property. The defendant pleaded limitation. Both the Lower Courts, holding that Act IX of 1871, Art. 127 applied, decreed the plaintiff's claim. It was held by the High Court that the defendant had acquired, under Regulation V of 1827, a prescriptive title by his uninterrupted possession as proprietor for more than 30 years before Act IX of 1871 came

(1) Sel. Rep., v. 2, p. 156. | (2) I. L. R., 1 Bom., 286.

into force; the effect of the Regulation being not only to bar the plaintiff's remedy, but to take away his right.

(g) In *Gossain Dass Chunder v. Issur Chunder Nath*,⁽¹⁾ it was held, that 12 years' possession by a wrong-doer not only extinguishes the title of the rightful owner, but confers a good title on the wrong-doer. *Semble*.—Such title may be transferred to a third person whilst it is in course of acquisition, and before it has been perfected by possession. Where a plaintiff seeks to recover possession of property of which he has been dispossessed and bases his claim on the ground of purchase, and also upon the ground of a 12 years' possessory title, he is entitled to succeed if he proves his possession, even if he fails to prove his purchase. Following the above decision, the Allahabad High Court in *Jagrani Bibi v. Ganeshi*,⁽²⁾ held in January, 1881, that possession of land by a wrong-doer for 12 years not only extinguishes the title of the rightful owner of such land, but confers a good title on the wrong-doer. It was further held that a suit for the possession of trees is a suit for "land," within the meaning of section 29 of Act IX of 1871, land comprehending what it covers and including "immoveable property" as recognized and defined in section 2 of Act I of 1868. In *Keval Kuber v. The Talukdari Settlement Officer*,⁽³⁾ which was a suit for the cancelment of the Talukdar's Settlement Officer's order imposing rent under Bombay Act VI of 1862, it was held in March, 1877, that if the grant was the grant of an office remunerated by the use of land, the right to assess was barred, by the possession of a person not claiming under the grantee for a longer period than 12 years after the right to resume accrued, under Act IX of 1871, section 29 and Article 130, schedule 2. In *Rambhat Agnihotri v. The Collector of Puna*,⁽⁴⁾ it was held that the effect of Act IX of 1871, section 29, however, is not merely to bar the remedy, but to extinguish

12 years continuous adverse possession bars remedy and extinguishes right.

Suit for possession of trees, is suit for land.

(1) I. L. R., 3 Cal., 224.

(2) I. L. R., 8 All., 435.

(3) I. L. R., 1 Bom., 586.

(4) I. R. R., 1 Bom., 593.

the title of the original proprietor after 12 years of a possession adverse to him.

Suit to recover Dharmakartaship held barred and right extinct under section 29 of Act IX of 1871.

(h) In *Manally Chenna Kesavaraya v. Mungadu Vaidelinga*,⁽¹⁾ plaintiff, the great grandson of the founder of two pagodas, sued for the office of Dharmakarta or for the appointment of some person to it. He also prayed for an account of the pagoda property from the defendant. The facts of the case were as follow. The founder of two pagodas died in 1795, leaving six sons, of whom two were named *C* and *T*, respectively. *T*, the younger, died in 1834, leaving two sons, of whom one, who died in 1853 was the father of the plaintiff. The founder's elder son, *C*, died in 1816, leaving two sons, *M*, who died in 1840, and *L*, who died in 1847, and two daughters, *A* and the defendant's mother. The office of Dharmakarta descended from the founder to *C*. After his death a manager was appointed by the Collector, and *C*'s son *M* was dispossessed by his uncle *T*, and in 1834, *M* brought a suit in equity against *T* and his sons. Pending the final decree, *M* was appointed by the Supreme Court to act as Dharmakarta. A decree was never passed and the suit abated on *M*'s death in 1840. *M* was succeeded in the office of Dharmakarta by his brother *L*, who held it till 1847, when he died, leaving it by will to his sister, *A*, and her husband *R* jointly. *R* died soon after, and *A*, in 1872, leaving the office by will to her sister's son, the defendant. It was held on the first question that the suit was barred by Article 123 of Act IX of 1871, inasmuch as the bequest of the office was hostile to the rights of the male members of the family. It was further held, that the plaintiff was precluded from setting up a fresh right as accruing to him on the death of *A* as the only male survivor of the founder's family by the provisions of section 29 of the Limitation Act IX of 1871.

Exclusive receipt of rent by one of the mortgagor's heirs for more than 12 years will not extinguish the

(i) Where the equity of redemption of a certain estate became, on the death of the mortgagor, the property of two divided branches of a Malabar tarwad, and the rents

(1) I. L. R., 1 Mad., 343.

and profits of the land were collected and enjoyed by the representatives of one branch for 15 years, such representatives were held to have acquired thereby no title such as would affect the right of the other branch to sue for possession. Exclusive receipt of rents may be evidence of an exclusive right to redeem the property, and though it would be a foundation for holding that the branch collecting the rent had for 12 years hostilely claimed an exclusive right to redeem, the right of the other branch to sue for possession would not be affected until the branch asserting exclusive title had had possession of the property itself for upwards of 12 years, such as would extinguish the right of the other branch under this section. Payments of the rents and profits to one branch could have no more effect as against the other, than if the rents and profits had not been paid at all, but withheld by the mortgagee. *Chathu v. Aku*⁽¹⁾

other's right to redeem; but actual exclusive possession of property itself would extinguish their right.

(j) In *Nocoer Chunder Bose v. Kally Coomar Ghose*,⁽²⁾ it was first held that under the Limitation Act of 1859, it was not only the remedy that was barred after the statutory period, but the debt also. Following the above decision and also upon a mis-understanding of the observations of the Privy Council in the case of *Gunga Govind Mundul*,⁽³⁾ which were only intended to apply to suits for the recovery of immoveable property, the court, in *Krishna Mohun Bose v. Okhilmoni Dossee*,⁽⁴⁾ which was a suit for arrears of maintenance, held that the suit having been barred under the Act of 1859, the debt as well as the remedy was extinguished. When the same question arose in *Ram Chunder Ghosaul v. Juggutmon Mohiney Dabee*,⁽⁵⁾ Garth, C. J., expressing his doubt of the correctness arrived at in the previous case, followed it and held with his colleague that the Limitation Act not only barred the remedy, but also extinguished the debt. When the same question came before the Court in *Mohesh Lal v. Busunt Kumaree*,⁽⁶⁾

As regards debts, law of limitation merely bars remedy but does not extinguish right.

(1) I. L. R., 7 Mad., 26.

(2) I. L. R., 1 Calc. 328.

(3) 11 Moore's I. A., 345.

(4) I. L. R., 3 Calc., 331.

(5) I. L. R., 4 Calc., 283.

(6) I. L. R., 6 Calc., 340.

Observations of
Garth, C. J.

the court, upon a review of all the previous decisions and also upon a review of *Valia Tamburatti v. Vira Rayan*⁽¹⁾ and *Madhavan v. Achuda*,⁽²⁾ in which the Madras High Court had taken contrary view of the question, held, that as regards debts, the Indian Laws of Limitation merely bar the remedy, but do not extinguish the right. Garth, C. J., observes: "I confess that it has been a great satisfaction to me to find that, since that judgment was delivered, not only Mr. Justice Prinsep, but several other Judges of this court have arrived at the conclusion that our decision was wrong."

(k) When Garth, C. J., dealt with the question and made the above observations, the attention of the court does not appear to have been drawn to *Nursing Doyal v. Hurryhur Saha*,⁽³⁾ in which a Division Bench (Pontifex, McDonell, J.J.) had held that the Limitation Acts IX of 1871, and XV of 1877, merely barred the remedy, but did not extinguish the debt. Pontifex, J., observes: "We are of opinion that neither the Limitation Act of 1871, nor that of 1877 extinguishes a debt. These Acts only bar or discharge the remedy. This, we think, is clear from the language of the Acts, and particularly from sections 12 and 29 of the Act of 1871, and sections 11 and 28 of the Act of 1877."

Difference between the
Indian Acts and
the English Limitation Law.

(1) "The difference between these Acts and the English Limitation Law is, that in India, limitation need not be set up as a defence (section 4 of the Act of 1871, and section 4 of the Act of 1877), while in England, the defendant must expressly claim the operation of the statute. Section 60 of the Contract Act, which was passed after the Limitation Act of 1871, also shows that the debt is not extinguished, but may be insisted on for certain purposes; so likewise if the creditor had a lien on the goods of his debtor on a general account, he would be entitled to hold the goods for a debt, the recovery of which was barred by the Limitation Act. And probably

(1) I. L. R., 1 Mad., 228. | (2) I. L. R., 1 Mad., 301.

(3) I. L. R., 5 Calc., 897.

it would be held that an executor would be allowed to retain out of a legacy a debt owing by the legatee to the testator, though its recovery was barred by the Act."

(m) In *Heera Lall Mookhopadhyaya v. Dhunput Singh*,⁽¹⁾ it was held that according to the principle laid down in section 25, clause 3, of Act IX of 1872, an agreement executed by a judgment-debtor promising to pay the debt secured by a decree against him was not void for want of consideration, even if the decree had been barred. In *Mullins Beddy*,⁽²⁾ it was held that debt due on a barred decree is sufficient consideration for a promissory note granted by the judgment-debtor. In *Tillakchand Hindumal v. Jitamal Sudaram*,⁽³⁾ it was held by the Bombay High Court, that a decree of 1862 which was barred in 1868, afforded a good consideration for the razeenamah executed by the judgment-debtor in August, 1868, transferring to the creditor certain lands for the debt. In *the Administrator-General v. Hawkins*,⁽⁴⁾ it was held that the Administrator-General of Madras is authorized to pay a barred debt. Kernan, J., observes: "I can have no doubt that an Administrator has equal power and privilege of paying and retaining a debt though barred by statutes as an executor. An executor may be restrained or guided by direction, express or implied, given by the will, and he must act on all such legal directions; but if he is not so restrained or guided, he and an Administrator (after administration) appear to me to have the same power and privileges including those of retainer, and payments of debts though barred." In *Bhala Nahana v. Parbhu Hari*,⁽⁵⁾ it was held in June, 1877, that a Hindu widow had full power to perform the contract of her husband with the parents of the adopted boy although 30 years had elapsed from the death of her husband. Section 60 of Act IX of 1872, allows a creditor to apply payment made by a debtor to the discharge of time barred

Other decisions supporting the view that the Statute of Limitation does not extinguish the debt.

The Administrator-General can pay a barred debt.

A Hindu widow was held entitled to perform her husband's contract 30 years after his death.

Payment may be appropriated to time barred debt under section 60 of the Contract Act.

(1) I. L. R., 4 Calc., 500.

(2) 6 N.-W. P. H. C., 150.

(5) I. L. R., 2 Bom., 67.

(3) 10 B. H. C. R., 206.

(4) I. L. R., 1 Mad., 267.

debts when the debtor has omitted to intimate to which debt the payment should be applied. Where neither party makes any appropriation, section 61 allows the payment to be applied in discharge of the debts in order of time whether or not they are barred by the Law of Limitation.

Mother merely by reason of being such and natural guardian of her minor son has no authority to acknowledge a debt on behalf of the minor.
(June 1896.)

(n) In *Wajibun v. Kadir Buksh*,⁽¹⁾ an acknowledgment of a debt on behalf of a minor was made by his mother and natural guardian, and the plaintiff relied upon it. A Division Bench (Ghose and Porter, J.J.) observe, "the mother, in the absence of any special authority being proved to exist in her, cannot be regarded as an agent on the part of the minor duly authorized in that behalf, within the meaning of section 19 of the Limitation Law; and it appears to us that a person, merely by reason of her being the mother and natural guardian has no authority to make an acknowledgment on behalf of minors, so as to give a creditor a fresh start for the period of limitation." The claim as against the minor was dismissed as barred.

The acknowledgment cannot be treated as a fresh promise as there was no consideration for it so far as the minor was concerned.

(o) It was contended that the acknowledgment implied a fresh promise, and that, therefore, irrespective of section 19, the debt was not barred against the minor. The court disallowed this contention, observing: "it is quite clear that there was no consideration so far as the minors were concerned, for this fresh promise on the part of the mother, and therefore the said promise by her could not be regarded as an act in the interest of the minors, such as would be binding upon them."

It does not make the mother responsible for the debt, as such was not the intention of the parties.

(p) It was further contended that by reason of her acknowledgment, the mother made herself liable to make good the debt and that it should be decreed against her. The court observed that it was obvious that it was never intended that the mother should make herself solely responsible for the debt and that it was never the plaintiff's case that she made herself so liable.

Secondary evidence may be given of an acknowledgment lost while in court.

(q) An original account book containing an acknowledgment of a debt had been filed in court, and subsequently lost whilst in court. It was held, that secondary evidence of such acknowledgment might be given, notwithstanding the words of section 19 of the Limitation Act. (See note *D* under Sec. 19, pp. 153-154.)

(1) I. L. R., 13 Cal., 292.

ACT XV OF 1877.
THE FIRST SCHEDULE.

Number and Year of Acts.	Title.	Extent of Repeal.
X of 1865 ...	The Indian Succession Act.	In Section 321, the words "within two years after the death of the testator, or one year after the legacy has been paid."
IX of 1871 ...	The Indian Limitation Act 1871.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section 599, and in Section 601 the words "within thirty days from the date of the order."

ACT XV OF 1877.

THE SECOND SCHEDULE.

(See Section 4.)

FIRST DIVISION: SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
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Word "when" used in the 3rd column of Act IX of 1871, altered into "from which" in the Act of 1877.

In Act IX of 1871, the words in the 3rd column were: "time when the period begins to run." In *Dhonesur Koorer v. Roy Gooder Sahoy*,⁽¹⁾ it was argued that the above phrase was somewhat ambiguous. Garth, C. J., observed, that by reading the above phrase as meaning time from which period begins to run, we think we should be doing no real violence to the language of the Act, and that we should be undoubtedly carrying out the intention of the Legislature. The alteration in the present Act was probably made with reference to the above remarks. See *V. K. Gugar v. B. D. Barve*,⁽²⁾ and note A, under section 12, p. 84-85.

The word 'suit' used in the first column refers only to suits under the Civil Procedure Code.

At the head of the first column of this schedule, the words are "description of suit." With regard to these words, used in the corresponding schedule of Act IX of 1871, the Bombay High Court in *Abba Haji Ishmail v. Abba Thara*,⁽³⁾ wherein an attorney, under Rule 149 of the Common Law Rules of the Supreme Court of Bombay, made an application, that his client should show cause why he should not pay the balance of his bill of costs, observe: "as the Legislature has used only the word 'suit,' and the only suits specially mentioned in the 2nd schedule are those under the Civil Procedure Code, it must be taken that those only are the suits meant. The court, of course, cannot extend the meaning of the word suits, so as to include such applications as the present, but must read the word in its popular, natural and ordinary sense.

(1) I. L. R., 2 Calc., 336. | (2) I. L. R., 2. Bom., 673.

(3) I. L. R., 1 Bom., 253.

Description of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (<i>to provide for the adjudication of claims to waste-lands.</i>)	PART I. Thirty days.	When notice of the award is delivered to the plaintiff.

(a) (No. 1, Act IX.) The suit under this Article should be instituted, in a court specially constituted under Act XXIII of 1863, by the claimant, or objector, on receipt of notice of the Board's adverse award. The Collector notifies such award to the Special Court, and the court gives notice to the claimant or objector. This Article does not apply to suits by Government to try claims to waste-lands where such claims have been admitted by Revenue authorities. (See sections 5 and 7 of Act XXIII of 1863).

Suit under this Article is to be brought in a court, specially constituted under Act XXIII of 1863.

(b) In *Taranath Dutt v. The Collector of Sylhet*,⁽¹⁾ it was held that the court cannot extend the period of 30 days allowed by section 5, Act XXIII of 1863, for preferring a suit to contest an award by the Board of Revenue, and that the filing of a vakalatnamah is not an institution of such a suit. Under the provisions of the Limitation Act (XV of 1877), the time may be extended.

Before Act XV of 1877, it was held that court cannot extend the period of 30 days.

2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	PART II. Ninety days.	When the act or omission takes place.
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(a) (No. 2, Act IX.) Certain local and special laws lay down different periods of limitation for suits under them for compensation, and provide at the same time for service

Certain local and special laws prescribe different periods.

(1) 5 W. R., Reference by Waste-land Courts, p. 1.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART II. Ninety days.	

of notice on the defendant, of intended litigation. The City of Madras Municipal Act (1 of 1884), section 433, provides that no action shall be brought "until the expiration of one month next after notice in writing has been left at the Municipal office, and at the place of abode of such person not later than six months from the date of which the cause of action arose." This Article applies only to suits for compensation, but not to suits for recovery of land or establishment of title.

Suit for money illegally levied may fall under this Article.

(b) In *Ranchhod Varajbhai v. The Municipality of Dakor*,⁽¹⁾ plaintiff sued a Municipality, constituted by Bombay Act VI of 1873, for the refund of money illegally levied from him as house-tax. It was held that the plaintiff was bound to serve a previous notice on the Municipality as required by section 86 of that Act, and wait till the expiration of at least one month after service of notice. Section 86 of the Municipal Act is not confined to an action of damages, but is applicable to every claim of a pecuniary character arising out of the Acts of Municipal bodies or officers. In *Mayandi v. McQuhae*, Vice-President of the Madura Municipality,⁽²⁾ which was a suit for money due under a contract, it was held that it was not a suit contemplated by section 168 of the Municipal Act, and that suits falling within it are suits in respect of acts and defaults of a different description.

In the case of certain acts, cause of action arises only when damage results.

See section 24 of the Limitation Act which provides, that if the act complained of does not give rise to a cause of action until some special damage results therefrom, the period will be computed from the time when the injury results. (*Vide notes under section 24.*)

Suit for refund of Income-Tax paid twice over.

(c) In the *Collector of Furreedpore v. Gooroo Dass Roy*,⁽³⁾ it was held in March, 1866, that a suit for refund

(1) I. L. R., 8 Bom., 421. | (2) I. L. R., 2 Mad., 124.
(3) 5 W. R., 137.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART II. Ninety days.	

of Income-Tax paid twice over in two different districts is barred by limitation if brought after three months from the accrual of the cause of action, whether the Collector acted legally or illegally in collecting the tax.

3.—Under the Specific Relief Act, 1877, Section 9, to recover possession of immoveable property.	PART III. Six months.	When the dispossession occurs.
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(a) (No. 3, Act IX of 1871, sec. 15, Act XIV of 1859.) Section 9 of the Specific Relief Act simply reproduces sec. 15, Act XIV of 1859, which did not abridge any rights possessed by a plaintiff, but was intended to give him the right if dispossessed otherwise, than by due course of law, to have his possession restored, without reference to title on which he holds, and that which the dispossessioner asserts. In cases under that section, a lessor, who had dispossessed otherwise, than by due course of law, a lessee whose term had expired, would be compelled to restore possession to the lessee. The plain object is to discourage proceedings calculated to lead to serious breaches of the peace, and to provide against the person who has taken the law into his own hands deriving any benefit from the process. It was intended to obviate the effect of the possible application of English Law to such cases. That law, as laid down in *Harvey v. Bridges* (XIV M. and W., 442,) is that the free-holder, if entitled to eject a person in possession, may commit an indictable offence in doing so, and yet gain all the advantages of a legal possession and be perfectly secure against the action of the party assaulted. *Kunhi Komapen Kurupu v. Chembata Ambu*.⁽¹⁾

Section 9 of the Specific Relief Act is intended to restore possession without reference to title.

Object of the law is to discourage proceedings likely to create breaches of the peace.

(b) In *Seetul Chunder Bhattacharjee v. Judoonath Bose*,⁽²⁾ the plaintiff claimed to have it declared that

Carrying away the crops is not dispossession

(1) 2 M. H. C. R., 313. | (2) 25 W. R., 180.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART III. Six months.	

when Kaboolut was for payment of rent.

defendant No. 3 was his ryot, on the ground that, by some collusion between her and defendant No. 1, the latter was set up as a middleman and so prevented him, plaintiff, from getting rent direct. The act of dispossession was the forcible carrying off of the crops by defendant No. 1. It was held, that as the kaboolut, if genuine, was for the payment of rent, no dispossession could take place in the carrying off of the crops, and that there was consequently no cause of action.

Partial dispossession of a house is dispossession within this Article.

(c) In *Sabapathi Chetti v. Subraya Chetti*,⁽¹⁾ it was held that a suit lies under section 9 of the Specific Relief Act, when plaintiff's possession of a house, well, &c., has been partially as well as when it has been wholly disturbed.

Casual trespasser's possession is not possession.

(d) In *Dadabhai Narsidas v. the Sub-Collector of Broach*,⁽²⁾ it has been observed that mere possession as a trespasser is not sufficient to entitle a plaintiff to recover in a suit brought under section 15 of Act XIV of 1859. There must be in the plaintiff juridical, as opposed to mere physical possession.

A tenant forcibly dispossessed, might sue landlord for possession; but an agent cannot sue the owner returning on his land.

(e) In *Jonardun v. Haradhun*⁽³⁾ it was held, that a landlord ejecting a tenant forcibly, and of his own authority, may be sued under this Article, though the dispossession may have been after the expiry of the term of the lease. But a mere agent who has been put into possession of property on his employer's behalf cannot, by denying his employer's right to possession, not only hold the property against his employer, but turn his employer out under this section, even though his employer has committed no breach of the peace or committed any act of which the agent could complain other than that of returning upon his own property. *Madhub Chunder Giree v. Sham Chand Giree*.⁽⁴⁾

Decision under this Article does not give fresh starting point to suit on title.

(f) In a suit for possession of land, where it appeared that the plaintiff had forcibly turned out the other party

(1) 1 L. R., 3. Mad., 250.

(2) 7 B. H. C. R., A. C., 82.

(3) 9 W. R., 513.

(4) 1 L. R., 3. Calc., 243.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART III. Six months.	

and compelled him to seek his remedy under section 15, Act XIV of 1859, it was held that plaintiff was not entitled to get a fresh starting point for limitation from the date of the decision in that case. *Prem Chand Kybutta v. Huree Doss Kybutta*.⁽¹⁾ In *Golam Nabi v. Biswanath Kar*,⁽²⁾ it was held, that dispossession under a decree passed under section 15 of Act XIV of 1859, would not give a fresh cause of action for a suit for possession on title.

Dispossession under such decision does not give a fresh cause of action.

4.—Under Act No. IX of 1860 <i>(to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers)</i> , Section 1.	Six months.	When the wages, hire or price of work claimed accrue or accrues due.
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(No. 4, Act IX of 1871.) Government may empower any Magistrate to decide disputes as to wages or price of work, and the Magistrates so empowered have jurisdiction only in case the amount in dispute does not exceed the sum of Rs. 200. The Magistrate may direct performance of work, if complainants elect for work, and award two months' imprisonment for disobedience. Sections 1, 2 and 8, Act IX of 1860.

5.—Under the Code of Civil Procedure, Chapter XXXIX <i>(of summary procedure on negotiable instruments.)</i>	Six months.	When the instrument sued upon becomes due and payable.
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(No. 5, Act IX.) Sections 532 to 538 of Act XIV of 1882 contain the procedure for suits to which this Article applies.

This Article relates only to summary suits, while Arts. 69 to 80 apply to regular suits.

Articles 69 to 80 provide for the institution of *regular* suits on negotiable instruments within three years from the accrual of cause of action.

(1) 22 W. R., 259. | (2) 3 B. L. R., App., 85.

Description of suit.	Period of limitation.	Time from which period begins to run.
6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	PART IV. One year ...	When the penalty or forfeiture is incurred.

Suit for tax under Municipal Act, is not a suit for penalty.

(a) (No. 6, Act IX ; section 1, clause 2, Act XIV.) A suit for tax under The Towns' Improvement Act is not a suit for penalty or forfeiture within the meaning of this Article. The President of the Municipal Commission, Guntur v. Srikakulapu Padmarazu.⁽¹⁾

Municipal Bye-laws.

(b) The bye-laws passed by the Municipal Commissioners of a town under the provisions of the Municipal Act have the force of law and may fall under this Article.

Clause in a Government lease entitling plaintiff to grazing fees, was held a bye-law.

(c) "Held, that a clause in a lease from Government, which entitled plaintiffs to certain grazing fees, authorizing impounding and the levy of an extra fee in the case of cattle grazed without permission, was a bye-law within the meaning of this Article: Meri Lal v. Mukhta (Punj Rec., No. 3 of 1875.)"⁽²⁾

7.—For the wages of household servant, artisan or laborer not provided for by this schedule, No. 4.	One year ...	When the wages accrue due.
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(No. 7, Act IX ; sec. 1, cl. 2, Act XIV.) This Article and Articles 4 and 101 provide for suits for wages in three special classes of cases. Suits for wages not falling under them will generally be governed by Article 102.

Teacher of fencing is not a servant.

(a) In Pylwan Jarkan Sahib Vasthath v. Jenaka Raja Tevar,⁽³⁾ which was a suit by a teacher of fencing, for monthly payment due, it was held that Article 7 of Act IX of 1871, did not govern the suit.

Person entitled to sweep and supply flowers in temple, is not a servant within this Article.

(b) A person whose duties are to sweep and clean a temple, provide flowers for daily worship, and garlands for

(1) I. L. R., 3 Mad., 124. | (2) Rivaz's Limitation Act, p. 86.
(3) 8 M. H. C. R., 87.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

the idol, is not a household servant or labourer within the meaning of this Article. *Bhavath Radan v. Rama*.⁽¹⁾

(c) In *Virasvami Nayak v. Sayambabay Sahiba*,⁽²⁾ the plaintiff, a native artist, agreed to supply pictures to the late Rajah of Tanjore, and sued for their value. It was held that the price cannot be considered as the wages of an *artisan* within clause 2, section 1, of Act XIV of 1859.

An artist agreeing to supply pictures is not an *artisan*.

(d) In *Andi Konan v. Venkata Subbaiyan*,⁽³⁾ the plaintiff, in consideration of the possession and use of the land being given him and of one-third of the produce, undertook to do all that was necessary for the cultivation of the land. It was held that by this agreement the parties were placed in a very different relationship from that of employer and labourer.

A person undertaking to do all the necessary work for cultivation in consideration of use of land and one-third of produce is not a labourer.

(e) In *Nitto Gopal Ghose v. Mackintosh*,⁽⁴⁾ it was held, that a suit for salary by a mookhtyar employed on a monthly pay is not barred by the limitation of one year prescribed by clause 2, section 1 of Act XIV of 1859. But a suit for wages due to a factory gumastah engaged on a monthly pay of 10 Rupees, was held to be governed by the above clause. *Nobin Chunder v. Kenny*.⁽⁵⁾

One year's rule held to affect a mookhtyar's suit for salary, but not a factory gumastah's suit for wages.

(f) In *Sivarama Pillai v. Turnbull*,⁽⁶⁾ it was held that clause 2, section 1 of Act XIV of 1859, applies only to suits for wages brought by a servant against the person liable as the master in whose service he had been employed, and the section does not apply to a suit brought by one Government servant against another for the recovery of a sum of public money received by the defendant as a disbursement on account of the wages of plaintiff to whom the defendant was legally bound to pay it over.

This Article applies only to suits against the employer and not to a suit against Government servant who received money for disbursement of wages.

(1) I. L. R., 7 Mad., 99.

(2) 2 M. H. C. R., 6.

(3) 2 M. H. C. R., 387.

(4) 6 W. R. C. R., 11.

(5) 5 W. R. S. C., 3.

(6) 4 M. H. C. R., 43.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART IV.
One year.

Date of dismissal of servant is not the starting point, but the end of the month if appointed on monthly salary.

(g) In *Kalichurn Mitter v. Mahomed Soleem*,⁽¹⁾ it was held, that where a servant is appointed on a fixed monthly salary, and there is nothing to show that the salary is to be paid in advance, the limitation as to each month's salary commences from the time at which the salary became due, i.e., the end of the month, and not from the date of the dismissal of the servant.

8.—For the price of food or drink sold by the keeper of a hotel, tavern, or lodging house.	One year ...	When the food or drink is delivered.
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(No. 8, Act IX ; sec. 1, cl. 2, Act XIV.)

9.—For the price of lodging.	One year ...	When the price becomes payable.
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(No. 9, Act IX ; sec. 1, cl. 2, Act XIV.) Article 110 allows 3 years to a suit for arrears of rent.

10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or special contract.	One year ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
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Under XIV of 1859 time ran from the date of purchaser's possession under sale impeached.

(a) (No. 10. Act IX ; section 1, cl. 1, Act XIV.) The provisions of Act XIV of 1859 declared that in pre-emption suits, the period of limitation should be computed from the time at which the purchaser shall have taken possession under the sale impeached. In

(1) 6 W. R. C. R., 33.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Ganeshee Lall v. Toola Ram (H. C. R., N.-W. P., 1868, p. 367) the term possession was construed to mean such possession as the nature of the things sold admitted of, and that it did not necessarily mean tangible or visible possession. The language of Article 10, of Act IX of 1871, differed from the former one in declaring that the period began to run when the purchaser took actual possession under the sale. As to what was meant by actual possession, the Full Bench of the Allahabad High Court held in August, 1876, that full effect would be given to the term, if it was held that where the nature of the subject of sale admitted of visible and tangible possession, limitation would run from the time that such possession was taken, but that when the nature of the subject of the sale did not admit of tangible possession, limitation ran from the date when the subject of sale was completely conveyed to and vested in the purchaser. *Jageshar Singh v. Jawahir Singh*.⁽¹⁾ The above decision was followed in *Bijai Ram v. Kallu*,⁽²⁾ in which conditional vendee had obtained such complete possession that entitled him to secure mutation of name in the Revenue registry. With reference to the above observations, the Legislature would appear to have altered in the Act of 1877, the time from which limitation should be counted in pre-emption suits.

Possession was construed not to mean tangible or visible possession. Act IX of 1871 required actual possession.

When subject of sale did not admit of tangible possession, time was held to run from date that it is completely conveyed to and vested in the purchaser.

(b) In *Lachmi Narain Lal v. Sheoambar Lal*,⁽³⁾ the mortgagee in possession became vendee, by a deed dated October, 1873, by which Rs. 200 were to be paid in cash to the vendor, and Rs. 98 to go in redemption of the mortgage. The vendor sued to recover the purchase money and obtained a decree in March, 1877. The plaintiffs sued to obtain possession by a right of pre-emption within one year from the date of payment of purchase money by the

A. H. Usufructuary mortgagee becoming vendee, obtains physical possession, only when sale becomes complete on payment of purchase money.

(1) I. L. R., 1 All., 311. | (2) I. L. R., 1 All., 592.

(3) I. L. R., 2 All., 409.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

mortgagee. It was held that the mortgagee becoming vendee, obtained physical possession under the sale, not from the date of the sale deed, but when the contract of sale became completed on payment of the purchase money.

A. H. held that pre-emption suit should be brought within a year from the date of the mortgage deed which entitled the mortgagee to possession in default of payment of interest and not from date that registry was altered. (March 1879.)

(c) In *Gulab Singh v. Amar Singh*,⁽¹⁾ the defendant mortgaged his share in a zemindari, on the 19th December, 1876, providing in the deed, that he should hold possession and pay annually the interest to the mortgagee, who, in default, was empowered to sue for possession. Plaintiff by the terms of the *Wajib-ul-arz* contended that he was entitled to have had an offer of the share made to him before it was mortgaged. The suit was brought on the 8th February, 1878, and cause of action was said to have arisen on the 19th May, 1877, when the registry was altered to the mortgagee's name. It was held that whether the mortgagee held actual or constructive possession, the plaintiff was in either case bound to have brought his suit within a year from the date of the mortgage deed and not from the date that registry was altered.

A. H. held suit should be brought within a year from the date of physical possession of entire property.

(d) In *Jaikaran Rai v. Ganga Dhari Rai*,⁽²⁾ a conditional sale was made on the 3rd December, 1873, there was no transfer of possession, the conditional vendee took proceedings to foreclose, and the year of grace expired on the 23rd July, 1877; he then sued for possession and obtained a decree on the 19th December, 1878; the plaintiff, on the 15th January, 1879, sued to enforce his right of pre-emption based on an agreement entered in the administrative paper: some of the property was still in the possession of a mortgagee, whose mortgage was of prior date to the conditional sale: it was held that time will run from the date that the purchaser takes physical possession of the whole of the property sold. In *Mullick Abdool Guffoor v. Muleka*,⁽³⁾ it has been observed that

(1) I. L. R., 2 All., 237. | (2) I. L. R., 3 All., 175.

(3) I. L. R., 10 Calc., 1112.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year	

taking visible and tangible possession of property, or materially enjoying the rents and profits thereof, is taking physical possession, and what is usually called possession in this country is not only actual or khas possession, but includes the receipt of the rents and profits.

Taking tangible possession or enjoying rent is taking physical possession.

(f) In *Unkar Das v. Narain*,⁽¹⁾ which is a Full Bench decision, plaintiff, a co-sharer in an undivided village, sued on the 9th August, 1880, another co-sharer, and his vendee of the undivided share under a deed executed and registered on the 2nd July, 1879. According to the zemindari tenure, in this case, proprietors used to divide the balance of the profits every year. It was held that an undivided share of the village is not susceptible of physical possession, and that time begins to run from the date of the registration of the sale deed. Straight, J., observes, "on the one hand, the object of the Legislature has been to shorten the periods of limitation, its purpose on the other has been to encourage registration, and it was probably under the influence of both these considerations that the word 'physical' and the alternative provision in Article 10 were introduced." This was followed in *Bholi v. Imam Ali*.⁽²⁾

In case of sale of an undivided share of a village not susceptible of physical possession, time runs from the registration of sale deed. (July 1881.)

Observations of Straight, J.

(g) *Nath Prasad v. Ram Paltan Ram*,⁽³⁾ Full Bench, was a suit by a pre-emptor to enforce his right against the vendor and vendee under a registered deed of conditional sale relating to a fractional share of an undivided mahal. It was held, that the sale referred to in this Article must be an absolute one operating either by physical possession, or, where it is not susceptible, by the creation of a title under a registered deed, and that the suit was governed by Article 120. The Court observe: "The alternative

Pre-emption suit in respect of conditional sale of such property is not governed by this Article. (January 1882.)

Article 120 applies.

(1) I. L. R., 4 All., 24. | (2) I. L. R., 4 All., 179.

(3) I. L. R., 4 All., 218.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Observations of the court on the alternative date in the 3rd column which they think cannot apply to a conditional sale which has all the characteristic of a mortgage.

date mentioned in the third column of Article 10, cannot, in our judgment, be applied to a transaction of conditional sale which has about it all the characteristics of a mortgage, and further requires the intervention of the machinery of foreclosure before the vendee can acquire a proprietary title. We think that the sale referred to in Article 10 must be an absolute one having immediate effect and operation, in those cases where the interest passed is capable of physical possession, by physical possession, and where it is not, by the creation of a title under an instrument duly registered. We are aware that, in removing conditional sales from the category of Article 10, that failing any special provision to govern them, we relegate them to Article 120. We fully realize the anomalies that must thus necessarily arise, by giving the pre-emptor objecting to a conditional sale that has become absolute, a limitation of six years; and in those cases where the *Wajib-ul-arz* creates a right of pre-mortgage, two causes of action with a similar period in respect of each. But it appears to us that the Legislature overlooked this form of contract, when providing for the exercise of the right of pre-emption, and has consequently left cases of the kind mentioned in the order of reference unprovided for." Following the above decision, it was held in *Rasik Lal v. Gajraj Singh*,⁽¹⁾ that, where the mortgagee by conditional sale is not in possession under the mortgage, and after foreclosure has to sue for possession, the right to sue to enforce a right of pre-emption accrues when he obtains a decree for possession, and the suit is governed by Article 120. In *Ashik Ali v. Mathura Kandu*,⁽²⁾ the *Wajib-ul-arz* of a village provided that the right of pre-emption should accrue "not only in respect

Legislature appears to have overlooked cases of pre-emption in respect of conditional sale of an undivided share of a mahal;

Cause of action to enforce pre-emption accrues only when mortgagee obtains decree for possession;

Case where *Wajib-ul-arz* provided for right of pre-emption in respect of conditional sales,

(1) I. L. R., 4 All., 414. | (2) I. L. R., 5 All., 187.

Description of suits	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

of absolute sales, but also in regard to conditional sales, mortgages, and "thika leases." The suit having been laid to enforce the right of pre-emption in respect of a mortgage by conditional sale of a fractional share of an undivided mahal, it was held that the right accrued on the sale becoming absolute, and that the suit is governed by Article 120. In *Udit Singh v. Padarath Singh*,⁽¹⁾ a mortgagee under a deed of mortgage by conditional sale obtained a final order for foreclosure under Regulation XVII of 1806, in December, 1875. He then sued to have the conditional sale declared absolute and for possession of the mortgaged property, and obtained a decree for the relief sought for in April, 1881. It was held that the pre-emptor's full right to impeach the sale had not accrued until the mortgagee had obtained the decree of April, 1881, declaring the conditional sale absolute and giving him possession, and that Article 120 was applicable to this case.

Article 120 was held to apply to suit by pre-emptor against conditional vendee who had obtained decree declaring sale absolute, and giving him possession. Cause of action held to accrue from the date of decree.

(h) In *Prag Chaubey v. Bhajan Chaudhri*,⁽²⁾ plaintiff sued on the 23rd March, 1880, to enforce his right of pre-emption against the defendant, who had obtained a mortgage by way of conditional sale in 1866, and obtained possession in January, 1867. In 1877, the defendant applied for foreclosure under Regulation XVII of 1806, and the year of grace expired in July, 1878. In November, 1878, he sued to have the conditional sale declared absolute, obtained a decree, and in execution thereof took formal possession of the property on the 30th April, 1879. It was held, that the period of limitation ran from the 30th April, 1879, the day that the conditional vendee obtained possession in execution of his decree.

Though conditional vendee held possession as such, time runs from date of possession under decree declaring the sale absolute.

(i) The court granting a decree to the plaintiff in a

Decree becomes final not when affirmed by the

(1) I. L. R., 8 All., 54. | (2) I. L. R., 4 All. 291.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Lower Appellate Court, but on the expiry of the time for 2nd appeal or when 2nd appeal is disposed of.

pre-emption suit, is competent to grant the decree subject to the payment of the purchase-money within a fixed time, and if the decree-holder fails to comply with it, he loses the benefit of the decree. When a direction contained in a decree refers to the time at which the decree should become final, it does not become final on being affirmed by the Lower Appellate Court, but on the expiry of the period of Special Appeal or when such an appeal is instituted when the appeal is disposed of. *Shaikh Ewaz v. Mokuna Bibi.*⁽¹⁾

If on the last day the court is closed, decree does not become final before court re-opens.

If the time prescribed for an appeal from a decree for pre-emption expires on a day when the court is closed, the decree does not become final before the day the court re-opens. *Ram Sahai v. Gaya.*⁽²⁾

11.—By a person against whom an order is passed under Section* 280, 281, 282 or 335 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order.	One year ...	The date of the order.
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Orders under sections 246 and 269 of Act VIII of 1859 were final and cancellable only by regular suit to be brought within one year from their date.

(2) Section 246 of Act VIII of 1859, which related to investigation into claims and objections to the sale of property attached in execution of a decree, and section 269, which provided for investigation into the claims of persons other than defendants who may assert a right to the property sold in auction and obstruct delivery thereof

THE FOLLOWING ARE THE SECTIONS OF THE C. P. C. OF 1877, AND 1882.

* 280. If upon the said investigation the court is satisfied that, for the reason stated in the claim or

(1) I. L. R., 1 All. 132.

SECTIONS 246 AND 269, OF THE C. P. C. OF 1859.

246. In the event of any claim being preferred to, or objection offered against the sale of lands or any other immoveable or moveable

(2) I. L. R., 7 All., 107.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

to the purchaser, and of persons who may have been disposed by the purchaser, distinctly contained a special limitation clause to the effect that the order shall not be subject to appeal, but that the party dissatisfied with the order may bring a regular suit within one year from the date of the order.

objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

281. If the court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the court shall disallow the claim.

282. If the court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

283. The party against whom an order under section 280, 281 or 282 is passed, may institute a suit to establish the right which he claims to the property in dispute, but, subject

property which may have been attached in execution of a decree or under any order for attachment passed before judgment, as not liable to be sold in execution of a decree against the defendant, the court shall, subject to the proviso contained in the next succeeding section, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant as are contained in section 220. And if it shall appear to the satisfaction of the court that the land or other immoveable or moveable property was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person, the court shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the court that the land or other immoveable or moveable property was in possession of the party against whom execution is sought, as his own property, and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, the court shall disallow the claim. The order which may be passed by the court under this section shall not be subject to appeal, but the party against whom the order may be given shall be at liberty to bring a suit to establish his right [at any time within one year

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Limitation Act of 1871 repealed the limitation clauses in the two sections and enacted Article 15.

(b) The Limitation Act IX of 1871, which came into force on the 1st July, 1871, repealed the Limitation Clause contained in the said two sections 246 and 269 of Act VIII of 1859, and without alluding to any of the sections of the Procedure Code, enacted Article 15 as follows: "To alter or set aside a decision, or order of a Civil Court in any proceeding other than a suit." The object of the Legislature, was, no doubt, to remove from the Civil Procedure Code the provisions regarding limitations and embody them in the Limitation Act. Article 15 of Act IX of 1871, was considered by the Bombay High Court to be a substitute for the Repealed Limitation clause of sections 246 and 269 of Act VIII of 1859, while the Calcutta High Court was of opinion, that it was not a reenactment of the Repealed Clauses, and that the parties affected by the order might bring regular suits within the ordinary period allowed for such suits by the statute. The Madras High Court held, that although section 246 was repealed, an order passed

B. H. considered Article 15 of Act IX of 1871 a substitute for the repealed clauses of limitation in section 246 of Act VIII of 1859 while C. H. held it was not.

M. H. and A. H. held an order under section

to the result of such suit, if any, the order shall be conclusive.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

from the date of the order].

269. If it shall appear that the resistance or obstruction to the delivery of possession was occasioned by any person other than the defendant claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid, shall be dispossessed, the court, on the complaint of the purchaser, or of such person claiming as aforesaid, [if made within one month from the date of such resistance or obstruction or of such dispossession as the case may be], shall enquire into the matter of the complaint and pass such order as may be proper in the circumstances of the case. The order shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof.

In the above sections the words bracketed were repealed by Act IX of 1871, schedule 1.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

under it disallowing an objector's claim amounted to a summary declaration, and that such declaration was equivalent to a final adjudication against his right unless he brought a regular suit to supersede the order within one year. The Allahabad High Court was of the same opinion.

(C) The Indian Limitation Act of 1877 came into force in October, 1877, along with the Civil Procedure Code of 1877, and the latter substituted sections 281 and 335 for sections 246 and 269 of Act VIII of 1859. The Limitation Act of 1877, by Article 13, not only reproduced Article 15 of its predecessor, but also newly enacted Article 11 to meet the cases of orders passed in a suit, but not open to appeal. But the Article says nothing about the corresponding sections of the Code of 1859. The Madras High Court, in *Venkatachala v. Appathorai*,⁽¹⁾ held in July, 1884, that an order passed under section 269 of Act VIII of 1859, cancelling delivery of possession to a decree-holder as auction purchaser, was an order in a suit and did not fall within Article 13, and that the repeal of section 269 by the amended Code did not deprive the order of the character which attached to it when it was made, and that it was an order which was final unless and until it was set aside by a suit brought within a year. The High Court further held that such final order is a bar to a suit after time, and estops the party in a suit against him from asserting his right though one year had not elapsed. The Madras High Court, agreed with the Calcutta High Court in the opinion, that Article 11 of Act XV of 1877 did not apply to an order passed under the former Codes, and that a suit for possession brought after an order passed under section 246 of the old Code was not a suit to set aside an order in a proceeding other than a

246 operated as final adjudication until set aside by a suit though the section itself was repealed.

Limitation Act of 1877 reproduced Article 15 of 1871 as 13 and enacted Article 11 to meet cases of orders which fell under sections 246 and 269 of Act VIII of 1859.

M. H. held an order under section 269 of Act VIII of 1859 cancelling delivery of possession to auction purchaser did not fall within Article 13.

Such final order is bar to a suit after time though, as was held by C. H. Article 11 would not apply to an order passed under the Code of 1859.

(1) I. L. R., 8 Mad., 134.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Limitation Act of 1871 repealed the limitation clauses in the two sections and enacted Article 15.

B. H. considered Article 15 of Act IX of 1871 a substitute for the repealed clauses of limitation in section 246 of Act VIII of 1859 while C. H. held it was not.

M. H. and A. H. held an order under section

(b) The Limitation Act IX of 1871, which came into force on the 1st July, 1871, repealed the Limitation Clause contained in the said two sections 246 and 269 of Act VIII of 1859, and without alluding to any of the sections of the Procedure Code, enacted Article 15 as follows: "To alter or set aside a decision, or order of a Civil Court in any proceeding other than a suit." The object of the Legislature, was, no doubt, to remove from the Civil Procedure Code the provisions regarding limitations and embody them in the Limitation Act. Article 15 of Act IX of 1871, was considered by the Bombay High Court to be a substitute for the Repealed Limitation clause of sections 246 and 269 of Act VIII of 1859, while the Calcutta High Court was of opinion, that it was not a reenactment of the Repealed Clauses, and that the parties affected by the order might bring regular suits within the ordinary period allowed for such suits by the statute. The Madras High Court held, that although section 246 was repealed, an order passed

to the result of such suit, if any, the order shall be conclusive.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

from the date of the order].

269. If it shall appear that the resistance or obstruction to the delivery of possession was occasioned by any person other than the defendant claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid, shall be dispossessed, the court, on the complaint of the purchaser, or of such person claiming as aforesaid, [if made within one month from the date of such resistance or obstruction or of such dispossession as the case may be], shall enquire into the matter of the complaint and pass such order as may be proper in the circumstances of the case. The order shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof.

In the above sections the words bracketed were repealed by Act IX of 1871, schedule 1.

Description of suit.	Period of limitation.	Time from which period begins to run.
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under it disallowing an objector's claim amounted to a summary declaration, and that such declaration was equivalent to a final adjudication against his right unless he brought a regular suit to supersede the order within one year. The Allahabad High Court was of the same opinion.

246 operated as final adjudication until set aside by a suit though the section itself was repealed.

(c) The Indian Limitation Act of 1877 came into force in October, 1877, along with the Civil Procedure Code of 1877, and the latter substituted sections 281 and 335 for sections 246 and 269 of Act VIII of 1859. The Limitation Act of 1877, by Article 13, not only reproduced Article 15 of its predecessor, but also newly enacted Article 11 to meet the cases of orders passed in a suit, but not open to appeal. But the Article says nothing about the corresponding sections of the Code of 1859. The Madras High Court, in *Venkatachala v. Appathorai*,⁽¹⁾ held in July, 1884, that an order passed under section 269 of Act VIII of 1859, cancelling delivery of possession to a decree-holder as auction purchaser, was an order in a suit and did not fall within Article 13, and that the repeal of section 269 by the amended Code did not deprive the order of the character which attached to it when it was made, and that it was an order which was final unless and until it was set aside by a suit brought within a year. The High Court further held that such final order is a bar to a suit after time, and estops the party in a suit against him from asserting his right though one year had not elapsed. The Madras High Court, agreed with the Calcutta High Court in the opinion, that Article 11 of Act XV of 1877 did not apply to an order passed under the former Codes, and that a suit for possession brought after an order passed under section 246 of the old Code was not a suit to set aside an order in a proceeding other than a

Limitation Act of 1877 reproduced Article 15 of 1871 as 13 and enacted Article 11 to meet cases of orders which fell under sections 246 and 269 of Act VIII of 1859.

M. H. held an order under section 269 of Act VIII of 1859 cancelling delivery of possession to auction purchaser did not fall within Article 13.

Such final order is bar to a suit after time though, as was held by C. H. Article 11 would not apply to an order passed under the Code of 1859.

(1) I. L. R., 8 Mad., 134.

Description of suit.	Period of limitation.	Time from which period begins to run.
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A. H. also held such order to be absolutely a *res judicata* until set aside by a suit.

C. H. held that unsuccessful claimants who had one year under section 246 of the C. P. C. of 1859, had ordinary period of limitation under Act IX of 1871. And setting aside of the order unnecessary.

In one case plaintiff, who was barred by the Act of 1877, was allowed benefit of section 2 of the Act.

In another case claimant was allowed ordinary period as Article 11 did not refer to the C. P. C. of 1859.

suit falling under Article 15 of the Limitation Act of 1871. The Allahabad High Court have also held, that in the event of no regular suit being brought by the party against whom an order was passed under section 246 of Act VIII of 1859, the matter in dispute must be held to have been finally disposed of by the finding and order under that section, and to be absolutely a *res judicata*. All the decisions bearing upon this point have been noted below.

(d) In *Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry*,⁽¹⁾ the plaintiff, whose claim to attached property was rejected under section 246 of Act VIII of 1859, sued in May, 1876, to establish his right. The Lower Court rejected the suit as barred by Article 15 of Act IX of 1871. It was held that Article 15 was not a re-enactment of the repealed portion of section 246 of the C. P. C. of 1859, and that the suit was for a declaration of title in which setting aside an order within the meaning of Article 15 was not necessary. The above decision was followed in *Raj Chunder Chatterjee v. Modhoosoodun Mookerjee*,⁽¹⁾ in which a mortgagee in execution of whose decree a third party's claim to mortgaged property was allowed in July, 1877, sued on the 29th March, 1879, to establish his right to the property. It was held that although the period of limitation for the suit under Act XV of 1877 was one year, which had expired on the date of the suit, as the Act did not come into force until 1st October, 1877, the plaintiff was entitled to the benefit of the last para. of section 2 of Act XV of 1877, as Act IX of 1871 allowed him a longer period of limitation. In *Luchmi Narain Singh v. Assrup Koer*,⁽²⁾ plaintiff's claim to certain property was rejected under section 246 of Act VIII of 1859, on the 6th September, 1873. She brought

(1) I. L. R., 4 Calc., 610. | (2) I. L. R., 8 Calc., 395.

(3) I. L. R., 9 Calc., 43.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

a suit on the 10th January, 1878. It was held that the suit was not barred under this Article, which refers only to the sections of Act X of 1877, corresponding to section 246 of Act VIII of 1859, and that the suit was not one to set aside a summary order within Article 15, schedule 2, of Act IX of 1871. In *Gopal Chunder Mitter v. Mohesh Chunder Boral*,⁽¹⁾ the plaintiff, whose claim was rejected under section 246 of Act VIII of 1859, on the 7th September, 1876, instituted the suit to establish his right and for possession in October, 1879, after Act XV of 1877 came into force. The Lower Courts rejected the suit as barred. It was held that the suit was not governed by this Article, but by the general limitation of 12 years. In this case, the Calcutta High Court adhered to their own decisions, although they were referred to the decisions of the Bombay High Court holding that the period of limitation in all such cases was one year, and that Article 15, schedule 2 of Act IX of 1871 was substituted for the limitation provided for by the twelve repealed words in section 246 of Act VIII of 1859. *Krishnaji Vithal v. Bhaskar Rangnath*.⁽²⁾ *Venkapav. Chenbasapa*.⁽³⁾ *Jettiv. Sayad Husein*.⁽⁴⁾

(e) The Calcutta High Court followed their own decision in *Bessessur Bhugut v. Murli Sahu*,⁽⁵⁾ in which plaintiff, whose claim was rejected in August, 1877, under section 246 of Act VIII of 1859, sued to establish his title in June, 1878. The defendant died, and the court directed the issue of a summons on the defendant named by the plaintiff; but the plaintiff failing to pay batta, the suit was dismissed in March, 1879. In March, 1880, plaintiff brought a second suit. It was held that the suit was maintainable and that the order of August, 1877 not

C. H. adhered to their own decisions even after they were referred to those of B. H.

B. H. held Art. 15 of Act IX of 1871, to be substituted for repealed words of section 246.

Nevertheless C. H. followed their own decision and held this article inapplicable as it distinctly referred to section 283 of the Act of 1877, and not to section 246 of the Act of 1859. (July 1882.)

(1) I. L. R., 9 Calc., 230.

(2) I. L. R., 4 Bom., 611.

(5) I. L. R., 9 Calc., 163.

(3) I. L. R., 4 Bom., 21.

(4) I. L. R., 4 Bom., 23.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

being made under section 283 of Act X of 1877, to which the article distinctly refers, the suit was governed not by this Article, but by Article 120. The above decisions were followed in *Gend Lal Tewari v. Denonath Ram Tewari*.⁽¹⁾

M. H. and A. H. held such final orders to bar suits after one year and estop unsuccessful claimant from asserting his right as defendant.

(f) *Venkatachela v. Appathorai*,⁽²⁾ was brought for possession of property. The plaintiff, as decree-holder and auction purchaser, had obtained possession through court, but the delivery of possession was cancelled in August, 1877, under section 269 of Act VIII of 1859. The suit was not brought until 1883. The High Court expressing their concurrence in the opinion of the Calcutta High Court, in *Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry*,⁽³⁾ that a suit for possession after an order under section 246 of the old Code was not a suit to set aside an order in a proceeding other than a suit falling under Article 15 of the Limitation Act of 1871, and also agreeing with the ruling in *Gopal Chunder Mitter v. Mohesh Chunder Boral*,⁽⁴⁾ that Article 11 of the Limitation Act of 1877 did not apply to an order passed under the former Codes, held that the auction purchaser's suit was barred, as the repeal of section 269 of Act VIII of 1859, on the 1st October, 1877, by the Act of 1877, did not deprive the order of the 10th August, 1877 of the effect it possessed when passed. In *Bodri Prasad v. Muhammad Yusuf*,⁽⁵⁾ it was held that an order passed under section 246 of Act VIII of 1859 is binding on all the persons who were parties to it, and is conclusive unless overruled in a regular suit within one year.

M. H. and B. H. held defendant losing claim under section 246 of Act VIII of 1859, is estopped from asserting

(g) In *Krishna Rau v. Lakshmana Shanbhogue*,⁽⁶⁾ plaintiff, in execution of his money decree, attached his

(1) I. L. R., 11 Cal., 673

(2) I. L. R., 8 Mad., 134.

(3) I. L. R., 4 Cal., 610.

(4) I. L. R., 9 Cal., 230.

(5) I. L. R., 1 All., 381.

(6) I. L. R., 4 Mad., 302.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

debtor's interest in certain immoveable property held by the undivided family of which he was a member. The defendant, the father of the debtor, in August, 1875, objected to the attachment and prayed for release. On the 19th August, 1875, the claim was disallowed, and in September, 1875, the debtor died, and the plaintiff purchased his interest in auction sale in November, 1875, and instituted this suit to obtain possession of the debtor's share in June, 1876. The Lower Court being of opinion that the defendant's right to sue within one year not having been lost on the date of the suit, he could take objection to the sale in this suit. It was held, that the defendant was estopped from setting up the title he alleged in the claim case. The court observe, that although the terms of section 246 of Act VIII of 1859, corresponding to section 283 of Act X of 1877, are not so express, yet their effect is the same, and that the order was, and was intended to be, a summary declaration of a want of title in the objector, which declaration would amount to a final decision of the question between the parties, if the party aggrieved did not take the course indicated by the institution of a suit to supersede it. This was followed in *Velayuthan v. Laksmanna*.⁽¹⁾ In *Krishnaji Vithal v. Bhaskar Ranganath*,⁽²⁾ it was held that an order under section 246 is a final bar to the plaintiffs' right unless it was set aside by a regular suit within one year.

(h) In *Bukshi Ram Pergash Lal v. Sheo Pergash Tewari*,⁽³⁾ the plaintiff instituted a suit upon a mortgage deed and obtained a decree, directing the sale of the mortgaged property. Subsequent to that decree; defendants Nos. 5 and 6, in collusion with defendants Nos. 1 to 4, caused the mortgaged property to be sold, and at such sale, defen-

it in a suit by auction purchaser for possession though brought within one year of the order.

Decree holder as auction purchaser, sued for possession his deceased debtor's father whose claim had been disallowed.

The defendant was held estopped from asserting his title, though one year had not elapsed from order.

B. H. held an order under section 246 a final bar, unless set aside by suit within one year.

C. H. held this Article to bar plaintiff's suit, after release of property, only to have his right to attach declared, but not to bar other relief as against successful claimants.

(1) I. L. R., 8 Mad., 506. | (2) I. L. R., 4 Bom., 611.

(3) I. L. R., 12 Cal., 453.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Attachment of mortgaged property was removed on the claim of defendants 1 to 4 as purchasers.

Plaintiff sued to have it declared that his lien was of a date prior to the defendant's purchase and he had right to sell it.

Suit to declare that mortgage was of a prior date was not barred.

C. H. held unsuccessful claimant need not sue if debtor satisfied the decree for which property was attached and is not estopped from asserting his claim.

dants Nos. 1 to 4 became the purchasers. The plaintiff in execution of his decree then attempted to have the property sold, but the defendants Nos. 1 to 4 intervened, and an order was passed on the 28th January, 1882, in the execution proceedings releasing the property from attachment. The plaintiff brought the suit to have his mortgage lien and his right to sell declared, alleging that the title set up by the third parties was a fraudulent one, and had been collusively created. It was contended that the suit was barred. It was held that the right that was in litigation in the proceeding under section 280 was a right to attach and sell the property in dispute in execution of the decree which the plaintiff had obtained against the defendants Nos. 5 and 6, and that so far as that right was concerned, the present suit was barred, but that as regards the other right upon which the plaintiff had brought this suit, *viz.*, that he held a mortgage prior in date to the purchase of the defendants Nos. 1 to 4, and that the purchase of the defendants Nos. 1 to 4 was not real, the suit was not barred by this Article.

(i) In *Umesh Chunder Roy v. Raj Bullubh Sen*,⁽¹⁾ decree-holder for arrears of rent attached a tenure belonging to the debtor, who, pending the attachment, sold it to A in March, 1869. A's claim under sec. 246 of Act VIII of 1859 was rejected on the ground that alienation was invalid. In 1877, the decree-holder's heirs obtained another decree for rent against the same defendant and attached the same tenure. A's claim under section 278 of the Civil Procedure Code was rejected in May, 1879. A sued on the 6th of May, 1879, to have his right established. The Lower Court rejected the suit on the ground that it, ought to have been brought within one year from

(1) I. L. R., 8 Calc., 279.

Description of suits.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

• March, 1869. It appeared that after the dismissal of the claim the property was not sold, because the judgment debtor paid off the amount of the decree. The Court held that on the virtual withdrawal of the attachment on payment of the judgment debt, the purchaser's right stood good, and that the order that the sale was invalid only meant that it was invalid as against the judgment-creditor and purchaser in the execution case.

C. H. Court observed that order that claimant's purchase was invalid, only meant it was so against judgment creditor and purchaser.

(j) In *Jeoni v. Bhagwan Sahai*,⁽¹⁾ *B* caused a certain dwelling-house to be attached in execution of a decree held by him against *M* as the property of *M*. *J* preferred a claim to the property, which was disallowed by an order made under section 246 of Act VIII of 1859. Two days after the date of such order, *M* satisfied *B*'s decree. More than a year after the date of such order, *J* sued *B* and *M* to establish her proprietary right to the dwelling-house, alleging that *M* had fraudulently mortgaged it to *B*. It was held, following the Full Bench ruling in *Badri Prasad v. Muhammad Yusuf*,⁽²⁾ that *J* having failed to prove her right within the time allowed by law, was precluded from asserting it by the order made under section 246 of Act VIII of 1859, and that whether or not the decree was satisfied after the order was made, the effect of the order was the same.

A. H. held that unsuccessful claimant was precluded from asserting his right after one year, even if decree had been satisfied within one year.

(k) In *Gend Lall Tewari v. Denonath Ram Tewari*,⁽³⁾ the plaintiffs, after attachment, but before sale, purchased from the judgment-debtor, with the permission of the court, the land attached. Previous to the sale certain persons had claimed the land as having been sold to them by the debtor's father, and this claim was disallowed in November, 1876. In 1881, the plaintiffs alleging that they had been dispossessed by certain persons, amongst

C. H. held that unsuccessful claimant is not estopped from asserting his right as against purchaser from debtor with court's permission after attachment, but before sale.

(1) I. L. R., 1 All., 541. | (2) I. L. R., 1 All., 381.

(3) I. L. R., 11 Calc., 678.

Description of suit..	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

whom were the claimants in the execution proceedings, brought a suit to recover possession of this land against these persons; this suit was decided against the plaintiffs in the Lower Appellate Court on the ground that they had failed to prove that they had been in possession of the land twelve years before suit. On Appeal to the High Court, the plaintiffs, appellants, contended that the claim of the defendants in the execution proceedings having been rejected, and they not having brought a regular suit within one year from the order of rejection to establish their right to possession, the defendants were prevented by that order from contending that the plaintiffs had not been in possession at the time of that order.

Held, the order did not operate as an estoppel against the defendants who lost their claim.

It was held that the order did not operate as an estoppel against the defendants; and even if it could so operate, it would not do so until the time had run out within which they could have brought a suit to establish their right to possession, and that such time had not expired.

B. H. held that order excluded the claimant from any other remedy than the one provided for him by section 246.

The Bombay High Court, in *Krishnaji Vithal v. Bhaskar Rangnath*,⁽¹⁾ in accordance with *Settiappan v. Sarat Singh*,⁽²⁾ decided that the effect of the last clause of section 246 of the Code of 1859, was to exclude a party to an investigation under that section from any other remedy than the one thereby provided for him. With reference to this point, the Calcutta High Court Division Bench (Garth, C. J., and Beverley J.,) observe "apart from this question of limitation, there is nothing as far as we can see in the order itself which could create any estoppel of the kind.

C. H. observed there was nothing in the order itself which could create any estoppel, and they cannot help thinking that the construction put upon section 246 by all the courts has been productive of injustice and tended to

"There are certainly some authorities in this as well as the other High Courts, which seem to favor such a view of the section, but I cannot help thinking that

(1) I. L. R., 4 Bom., 611 | (2) 3 M. H. C. R., 220.

Description of suit.	Period of limitation.	Time from which period begins to run.
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this subject has not been sufficiently considered, and that in any question which may arise under the corresponding sections of the present Act (278 to 288) which are somewhat differently worded from section 246 of the old Act, it may be well to consider what the words 'suit to establish the right to the property' really mean. I cannot help thinking that the construction which has sometimes been put upon section 246 of the old Code may not only have been productive of injustice, but may have tended to defeat the intention which the Legislature had in passing the section."

defeat the intention of the Legislature.

(1) In *Shiboo Narain Sing v. Mudden Ally*,⁽¹⁾ it was held that a person whose goods are illegally sold under an execution, does not lose his right to them although he may have claimed them unsuccessfully in the execution proceedings. He may follow them into the hands of the purchaser or of any other person, and sue for them or their value without reference to anything which has taken place in the execution proceedings, except that he must bring his suit within one year from the time when the adverse order in the execution proceedings was made.

Unsuccessful claimant in execution case can sue within one year for goods seized or their value.

(m) In *Sivarama v. Subramanya*,⁽²⁾ certain land was mortgaged to A with possession to secure the repayment of a loan of Rs. 2,000 and interest. It was stipulated in the deed that the interest on the debt should be paid out of the profits, and the balance paid to the mortgagors. By an agreement subsequently made, it was arranged that the mortgagors should remain in possession and pay rent to A. A obtained a decree for Rs. 2,000 and arrears of rent and costs, and for the sale of the land, in satisfaction of the amount decreed. The land was sold for Rs. 2,855,

M. H. held second mortgagee's suit after one year from dismissal of claim for a portion of sale proceeds of mortgaged property, not affected by this Article.

(1) I. L. R., 7 Calc., 608. | (2) I. L. R., 9 Mad, 57.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

in March, 1881. In May, 1881, *B*, a puisne mortgagee, applied to the court for payment to him of Rs. 500 of this sum, alleging that *A* was entitled only to Rs. 2,000 and Rs. 280 costs, but not to arrears of rent in preference to his claim as second mortgagee. The claim of *B* was rejected on the 27th May, 1881, and the whole amount paid out to *A*. In February, 1882, *B* (who had filed a suit on the 23rd March, 1881,) obtained a decree upon his mortgage. On the 23rd May, 1884, *B* sued to recover Rs. 510 paid to *A* on account of rent on the 27th May, 1881. The Lower Courts dismissed the suit on the grounds—(1) that *A* was entitled to treat the arrears of rent as interest; (2) that the suit was barred by limitation. It was held on second appeal, that *B* was entitled to recover the sum claimed.

Auction purchaser's suit brought after one year from order passed in favor of a claimant was held barred. (April 1886.)

Time of the pendency of the first suit rejected for non-production of a registered sale certificate was not deducted in computing period for the second suit.

Order contemplated by section 281 of

(n) In *Bai Jamna v. Bai Ichha*,⁽¹⁾ defendant's claim to property purchased by the plaintiff's husband in November, 1871, was allowed under section 269 of Act VIII of 1859, in November, 1872. Plaintiff's regular suit, brought in March, 1873, was rejected on the ground that she had not obtained a registered certificate. This decree was confirmed in November, 1879, by the High Court; the plaintiff, in July, 1873, obtained a second certificate and registered it, and on the strength of which she brought a second suit in April, 1880. It was held that the suit was barred, and that the plaintiff should have instituted his suit within one year from November, 1872. It was further held that the time that the first suit was pending cannot be deducted under section 14 of the Act, as the plaintiff's inability to produce a registered certificate at the institution of the suit was owing entirely to her own laches.

(o) In *Chandra Bhusan Gangapadhyia v. Ram Kanth*

(1) I. L. R., 10 Bom., 604.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Banerji,⁽¹⁾ plaintiff purchased on the 11th June, 1878, the share of one Rajcoomar in execution of a decree against him. The defendant purchased the share in August, 1880, at a sale in execution of another decree against Rajcoomar. When the share was attached in execution of the latter decree, the plaintiff put in a claim, which was rejected on the 25th January, 1880, on the ground that the sale was not likely to affect his interest, the boundaries of the attached property differing from those mentioned in the claimant's Kobala. The present suit for possession was brought on the 28th of April, 1882. The District Judge rejected the suit as barred by this section. It was held, that the order contemplated by section 281 of the Code of Civil Procedure is an order made after investigation into the facts of the case, and it is only when the order is made after such investigation that the limitation of one year is applicable to a subsequent suit under section 283 of the Civil Procedure Code. In *Bhikha v. Sakarlal*,⁽²⁾ a purchaser of immoveable property having been obstructed by defendant, applied under section 268 of Act VIII of 1859, for the removal of the obstruction, but subsequently withdrew his application. The court endorsed upon the application that no investigation was made. In a suit brought by him for possession, it was held that one year's limitation did not apply to his case. In *Sah Mukhun Lall Panday v. Sah Koondun Lall*,⁽³⁾ a claimant who put in his claim applied for suspension of sale to enable him to produce his conveyance after having it registered. The court refused his application, and more than a year from the date of refusal claimant sued to establish his right. It was held that the suit was not barred under section 246 of Act VIII

the C. P. C. and by section 335, corresponding to section 369 of Act VIII of 1859, is not one made without investigation.

Application made under section 268 of Act VIII of 1859 was withdrawn.

Refusal to postpone sale to enable claimant to have conveyance registered.

(1) I. L. R., 12 Cal., 108. | (2) I. L. R., 5 Bom., 440.

(3) 15 B. L. R., 228.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Property released on claim without any investigation.

of 1859, and that a mere refusal to postpone sale was an order under section 247. In *Jaggabandhu Bose v. Srimati Sachyi Bibi*; ⁽¹⁾ property attached was, on the claim of a third party, released by the court without proceeding under the provisions of section 246, Act VIII of 1859. The attaching creditor, more than a year afterwards, sued for a declaration that the property belonged to the judgment-debtor. It was held that the suit was not barred.

Applies to a party whose claim was rejected after investigation.

(p) *Venkatachala v. Appathorai*, ⁽²⁾ was a suit brought by a purchaser in auction, who was decree-holder, to establish his right to the land, on the 22nd February, 1883, or one year after 10th August, 1877, on which date delivery of possession to him was cancelled by an order passed under section 269 of Act VIII of 1859. It was held, that the suit was barred as it was not brought within one year as provided for by section 269 of Act VIII of 1859, and the repeal of that section by Act IX of 1871 did not deprive the order of the character which attached to it when it was made, and that the order was one passed in a suit, and does not fall within Article 13.

Section 269 of Act VIII of 1859 corresponds to section 335 of the new Code.

This does not apply to suit by party whose claim was rejected under section 332, of C. P. C.

(q) In *Ayyasami v. Samiya*, ⁽³⁾ plaintiff having been dispossessed in November, 1880, of a certain land in execution of a decree, applied under section 332 of the Civil Procedure Code for possession, which was disallowed on the 14th February, 1882. On the 6th March, 1883, he brought a regular suit for possession. It was held, that the suit was not barred by this Article, inasmuch as it does not refer to section 332. It was further held, that Article 13 does not apply, as it refers to decisions or orders passed in a proceeding other than a suit, and as an order in an execution proceeding is an order in a suit.

(1) 8 B. L. R., App., 39. | (2) I. L. R., 8 Mad., 134.
(3) I. L. R., 8 Mad., 82.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

(r) In *Nitta Kolita v. Bishunram Kolita*,⁽¹⁾ certain lands were attached under a decree against the ancestor of the plaintiffs, but on the intervention of the defendant, under section 246, Act VIII of 1859, they were released to him. It was held that the order was between the decree-holder and the defendant, but not between the plaintiffs and defendant, such as to make it necessary for the former to sue for declaration of title within one year. In *Durgaram Roy v. Raja Narsing Deb*,⁽²⁾ on attachment of certain property, plaintiff and defendants preferred their respective claims thereto. The plaintiff's claim was disallowed, but the defendant's claim was allowed. The plaintiff, after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property. The defence was that the suit was barred by lapse of time under clause 5, section 1, Act XIV of 1859, and section 246, Act VIII of 1859. Jackson, J. observes: "in this case, although, no doubt, an order was made setting aside the present plaintiff's claim, yet the court did not go on to sell the property. I think, therefore, that there was no binding order in force between the present plaintiff as claimant, and the execution-creditor, and also there was no order which in any respect finally decided any question of right between the present plaintiff and the present defendant."

Order to be affected by one year's rule should be one made between two parties.

An order allowing the claim of one of two rival claimants does not bind the other to one year's rule.

Observations of Jackson, J.

(s) In *Imbichi Roy v. Kakunnat Upakki*,⁽³⁾ it was held that when the judgment-debtor is not made a party to a proceeding under section 246 of Act VIII of 1859, he is not bound by the law of limitation to sue to establish his right to the property within one year from an order under that section releasing it from attachment.

Even judgment debtor who was not made a party to the proceedings under section 246 is not affected by the one year's limitation.

(1) 2 B. L. R., App., 49. | (2) 2 B. L. R., A C., 254.

(3) 1 L. R., 1 Mad., 391.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Parties are not bound to resort to section 280, 281, 282, or 236 of the C. P. C.

(t) Plaintiff's tenant having been ejected from certain immoveable property of the plaintiff under an auction sale in execution against a third party, the plaintiff made no application to the court under sections 246 or 269 of Act VIII of 1859, to prevent or set aside the sale. It was held that he was not bound to do so, but that he was entitled to file a regular suit within 12 years. *Lalchand Ambaidas v. Sakharam Valad Chandrabhai*.⁽¹⁾ In *Protab Chunder Chowdhry v. Brojolah Shaha*⁽²⁾ it was held, a person dispossessed of property in execution of a decree against another person and claiming to be entitled to possession, is not bound to proceed under section 269 of Act VIII of 1859. A person dispossessed of property by a purchaser in execution of a decree without resorting to summary remedy filed a regular suit for possession. It was held he had 12 years from the date of dispossession. *Jadoonath Chowdhry v. Radhomonee Dassee*.⁽³⁾

Claimant may sue for compensation for damage to and for loss of use of ox or boat attached.

(u) Besides the recovery of the article such as an ox, or boat, wrongly seized in execution that may be sought to be recovered, the owner may seek compensation for damage to it or for his loss of the use of it, and for such a suit Article 29 prescribes a term of one year. But again, the recovery of the specific article may be impossible or undesirable, and then the owner may seek compensation for the thing itself and for the damage he has sustained. To such a suit it cannot be doubted that Article 29 would apply: as the double claim of compensation consists of elements of identical character, these, though capable of separate existence, blend by contract in their subject into one. *Jagjivan Javherdas v. Gulam Jilani Chaudhri*.⁽⁴⁾

(1) 5 Bom., H. C. R., A. C., 139.

(2) B. L. R., Sup. Vol., 638.

(3) Id. 643.

(4) I. L. R., 8 Bom., 17.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

(v) In *Settiappan v. Sarat Singh*⁽¹⁾ plaintiff's claim under section 246 of Act VIII of 1859, for a certain property attached in execution of a decree, was rejected in July, 1863, and his regular suit to set aside the sale was brought after sixteen months from that date, but within one year from the date of confirmation of the court sale. The question for decision was, whether a party to an investigation under section 246 of the Code is competent to maintain a suit to set aside the sale that may ultimately be made by the court, or is limited to his remedy by a regular suit to establish his right, and so to set aside the order made against him in the proceeding, under section 246 of the Code. It was held that the effect of the last sentence of section 246, Act VIII of 1859, is to exclude a party to an investigation under that section from any other remedy than that expressly provided for him by that section, viz., a regular suit to be brought within one year from the date of the order made against him; and that such party cannot wait till the sale of the attached property has taken place and been confirmed, and then bring his suit within one year from the last date.

Unsuccessful claimant cannot wait till sale takes place and then sue within one year from the date of sale.

(w) This article provides for institution of regular suits within one year from the date of the order passed under section 281 of the Code of Civil Procedure, while the following article provides for institution of suits to set aside a sale within one year from the confirmation of sale. Sale of attached property subsequent to the dismissal of one's claim will not give him a fresh starting point. If the suit is brought within one year from the confirmation of sale under Article 12, it will be barred under Article 11 if it is not brought within one year from the dismissal of the claim.

Sale subsequent to dismissal of one's claim will not give him a fresh starting point.—Though suit is laid within one year of sale, if it is not within one year of the dismissal of claim, it will be barred.

(1) 8 M. H. C. R., 220.

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>12.—To set aside any of the following sales:—</p> <p>(a) sale in execution of a decree of a Civil Court;</p> <p>(b) sale in pursuance of a decree or order of a Collector or other officer of revenue;</p> <p>(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears;</p> <p>(d) sale of a patni taluq sold for current arrears of rent.</p> <p><i>Explanation.</i>—In this clause ‘patni’ includes any intermediate tenure saleable for current arrears of rent.</p>	<p>PART IV.</p> <p>One year ...</p>	<p>When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.</p>

This Article applies only when sale to be set aside is one of the kinds therein mentioned.

(a) (No. 14, Act IX, sec. 1, clause 3, Act XIV.) This Article does not apply where the suit is not substantially a suit to set aside a sale of one of the kinds mentioned in the Article. The confirmation of a sale under the Civil Procedure Code binds the parties to the suit and the purchaser, and no regular suit lies to set aside such a sale on the ground of irregularity in publishing or conducting the sale. Sec. 312. For demands recoverable as arrears of revenue see Act VII of 1868, B. C., and section 5 of Act XI of 1859.

Suit to recover what was taken in excess of what was sold is not a suit to set aside sale. (May 1875.)

(b) It is not incumbent on a person seeking not to interfere with the sale in execution of a decree of the right, title, and interest of the judgment-debtor but to recover what has been taken in excess under colour of sale, to sue within the period of limitation prescribed by law for a suit to set aside the sale. The mere circumstance that there is a specification of the subject of the sale at

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

the time of sale is of no force. It is not the property specified, but the right of the judgment-debtor therein, that is offered for sale and conveyed. *Musammatt Shara-fat-un-nissa v. Lachmi Narain*⁽¹⁾

(c) A suit brought to set aside a sale based on allegations of irregularities in publishing or conducting the sale will be barred if more than a year has elapsed since the confirmation of the sale. *Ram Sarup v. Roghoonundan* (1 Weekly Notes, 52)

Suit to set aside sale for irregularity falls under this Article.

(d) "There is nothing in the provision of this Article to indicate that it applies only to parties to suits. Where a sale has been made of the right, title, and interest of a party to the suit, it has been held that a stranger to the suit is not bound to sue within one year for the recovery of property which the purchaser may claim to have acquired under the sale. This is not because the stranger was not a party to the suit, but because the court did not profess to sell his interest in the property." "Where, however, the property itself has been sold and the sale purports to pass the property absolutely, and would pass it unless set aside, it can only be set aside within one year from the date of confirmation." *Suryanna v. Durgi*.⁽²⁾ In *Nilakandan v. Thandamma*⁽³⁾ A sought to redeem certain land demised by him on Kanam in 1850 to the predecessor of B; C, who was in possession of the land was made a defendant. A proved his title to the land and possession up to 1850. C pleaded title to the land and denied that B had ever been in possession. Both pleas were found to be false. It was found, however, that C had been in possession from 1869 to 1885, and that in 1876 the land had been sold in execution of a decree against C (to which A was not a party) and purchased by

This Article does not indicate that it applies only to parties to suits.

Stranger held not bound to sue within one year because sale of right, title, &c., of a party does not convey the stranger's title.

But when property itself is sold, sale can only be set aside within one year.

A third party's suit to recover land sold in execution of decree was held not barred by this Article.

(1) 7 N.-W. P. H. C. R., 288. | (2) I. L. R., 7 Mad., 261.

(3) I. L. R., 9 Mad., 460.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

D who resold to *C* in 1879. The Lower Court held that *C*'s possession must be taken to have been derived from *B* till the contrary was proved; but that the suit was barred by Article 12 of schedule 2 of the Indian Limitation Act 1877, because it had not been brought within one year from the date of the sale in 1876. It was held that the suit was not barred by limitation and that the case should be decided on the principle laid down in *Venkata Narasiah v. Subbamma*⁽¹⁾ and *Sadagopa v. Jamuua Bhai*⁽²⁾ which were not overruled by the decision in *Suryanna v. Durgi*.⁽³⁾

Suit to cancel court sale made as property of another person does not fall under this Article.

(e) In *Nathu v. Badri Das*,⁽⁴⁾ the plaintiff alleging that certain immoveable property belonging to him had been sold in execution of a decree against some other person as the property of that person, sued the purchaser to have the sale set aside and to recover possession of the property. It was held that the plaintiff had 12 years. In *Nito Kallee Debee v. Kripanath Roy*⁽⁵⁾ it was held that a third party is not bound to go and urge his claim to a property advertised for sale in execution, or to sue within one year from the date of delivery to the auction-purchaser.

Suit to recover plaintiff's share from purchaser who took possession under court sale of plaintiff's co-sharer's interest is not affected by one year's rule. (August 1875.)

(f) In *Tonoo Ram Gossain v. Mohessur Gossain*⁽⁶⁾ the rights and interests of plaintiff's co-sharer having been sold under a decree, the purchaser possessed himself of plaintiff's share as well as of his own. It was held that in a suit to recover possession, plaintiff was not bound to bring his action within one year from the date of disposition; but had a right to the limitation of twelve years.

Suit for pro-property setting aside sale certificate which wrongly included it, is not affected by this Article.

(g) In *Baboo Pertab Chunder v. Baboo Brojo Lall*,⁽⁷⁾

(1) I. L. R., 4 Mad., 178.

(2) I. L. R., 5 Mad., 54.

(3) I. L. R., 7 Mad., 258.

(4) I. L. R., 5 All., 614.

(5) 8 W. R., 358.

(6) 24 W. R., 302.

(7) 7 W. R., 253, F. B.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	.

plaintiff was dispossessed under a certificate of sale which was not conformable to or warranted by the sale itself, and made no complaint to the court which was executing the decree. It was held that he is entitled to bring his suit for confirmation of his title and to be restored to the possession of the property from which he was ousted at any time within twelve years from the time of his dispossession.

(h) In *Sadagopa v. Jamuna Bhai*,⁽¹⁾ which was a suit to set aside auction sale effected by a court which had not jurisdiction, it was held that this Article does not apply to a case in which the plaintiff was not a party to and not bound by the sale sought to be set aside.

Suit to cancel sale made by court having no jurisdiction is not affected by this Article.

(i) *P.* obtained an *ex-parte* decree against *M* in April, 1874, and on the 18th August, 1875, the High Court dismissed the appeal on the ground that the decree was not appealable. On the 27th November, 1878, the Privy Council remanded the appeal. On the 1st March, 1880, the High Court modified the original decree. In the meantime the property of *M* was sold in 1874-75, and 1876, in execution of the decree. In February, 1881, or within one year from the date of reversal of the decree, *M* sued for cancellation of sale and possession; it was held that both under Article 14 of Act IX of 1871 and 12 of Act XV. of 1877, the suit was barred. *Parshadi Lal v. Muhammad Zain-ul-Abdin*.⁽²⁾

Defendant's suit to cancel court sale and recover property on reversal of decree held barred though brought within a year of reversal, as reversal does not give a fresh starting point.

(j) In *Jan Ali v. Jan Ali Chowdhry*,⁽³⁾ it was held that a *bond fide* sale under a decree is binding notwithstanding the decree may be set aside upon review, and that a sale by the Sheriff in case of *feri facias* to a *bond fide* purchaser under a decree is not affected by the rever-

Subsequent reversal of the decree in execution of which property was sold does not render sale invalid as against purchaser. (June 1888.)

(1) I. L. R., 5 Mad., 54. | (2) I. L. R., 5 All., 573.

(3) 10 W. R., 154.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Reversal of execution does not restore the Sheriff to the term but to the monies by which he came by act of law.

sal of the decree. Peacock, C. J., observes : " The other case to which reference is made by Mr. Justice Norman is that of *Goodyere v. Ince*, Coke's Reports of the times of James 1st, page 246. The court there held that ' there was a difference between the sale and delivery upon an *elegit* to the party himself and a sale to a stranger upon a *fieri facias*; for the *fieri facias* gives authority to the Sheriff to sell and to bring the money into court; wherefore, when he sells a term to a stranger although the execution be reversed, yet he shall not by virtue thereof, be restored to the term, but to the monies, because he came duly thereto by act in law. But the sale and delivery of the lease to the party himself upon an *elegit*, is no sale by force of the writ, which being reversed, the party shall be restored to the term itself.' We think that the distinction is founded upon reason and good sense, and that our decision must be in accordance with these authorities. It is therefore necessary to decide whether the purchaser under the execution was a *bond fide* purchaser, or whether as alleged in the plaint, he was in collusion with the *ijaradar*, the plaintiff, in the Revenue suit."

C. H.
Suit to set aside sale in execution of a decree which was since held in appeal as barred, falls under this Article.
(January 1886.)

(k) In *Mahomed Hossein v. Purundur Mahto*,⁽¹⁾ judgment-debtor on the 15th June, 1878, filed a petition objecting to the execution of the decree against him on the ground that the decree was barred. On the 18th November, 1878, that objection was overruled and certain of his property sold. On the 13th January, 1880, the High Court, on the debtor's appeal, set aside the Lower Court's order and held the decree as barred. Pending these proceedings, the judgment-debtor also, on the 17th December, 1878, applied under section 311 of Civil Procedure Code (Act XIV of 1882) to set aside the sale on the

(1) I. L. R., 11 Calc., 287.

Description of suit	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

ground of material irregularity, but that application was rejected on the 17th May, 1879, and the sale was confirmed on the 21st May, 1879. On the 2nd April, 1880, the judgment-debtor applied to set aside the sale on the ground that the decree in execution of which it had taken place, had been held to be barred, and though an order setting aside the sale was made by the original court, it was subsequently set aside by the High Court on the 13th April, 1881, as having been made without jurisdiction. The judgment-debtor brought the present suit on the 4th January, 1882, upon the same grounds to set aside the sale and recover possession. It was held that the suit under this Article was barred.

If in an application for execution the court erroneously holds that the application is not barred and orders a sale, the order, though erroneous and liable to be set aside in the way prescribed by the Procedure Law, is not a nullity, but remains in full force until set aside, and a sale held in pursuance of such order, is, until set aside, a valid sale and a suit to set aside such a sale is governed by this Article, clause A.

Sale held under an erroneous order is not a nullity until set aside by suit.

The word "disallowed" in section 312 of Civil Procedure Code has no reference to an order passed on an appeal, but refers to the disallowance of the objection by the court before which the proceedings under section 311 are taken.

"Disallowed" has no reference to an order on appeal.

(1) In *Minakumari Bibee v. Jagat Sattani Bibee*,⁽¹⁾ a creditor obtained a decree against his debtor, and applied for and obtained an order for execution. This application was unsuccessfully opposed by the judgment-debtor on the ground that execution was barred by limitation. Certain properties of the judgment-debtor were attached

C. H.
But when execution is set aside on the ground that it was barred, defendant can sue to have the sale set aside. Execution creditor himself was purchaser.
(Sept. 1883.)

(1) I. L. R., 10 Calc., 220.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

and sold in execution of this decree, the judgment-creditor himself becoming the purchaser.

It cannot be said that sale is made to a *bond fide* purchaser for value without notice when the purchaser is the creditor himself.

In due course, the sale was confirmed and a certificate granted to the purchaser. Subsequently to this, the order granting execution came up before the High Court on appeal, and that court decided that execution was barred. The person who had been the judgment-debtor then brought a regular suit against the purchaser to recover the properties sold in execution. In this case, Garth, C.J., observes: it cannot be said that the sale was made to a *bond fide* purchaser for value without notice, because the execution creditor himself was the purchaser. It was held that the judgment-debtor was entitled to have the sale set aside, as otherwise the appeal to the High Court, though successful, would virtually be infructuous.

U. H.
Execution sale set aside on equitable ground.
(July 1884.)

(m) A sale in execution took place under an order obtained, notwithstanding a consent on the part of the decree-holder's pleader to a petition by the judgment-debtor for a postponement. The petition was by mistake presented to and filed by the judgment-debtor in the wrong court. The court that executed the decree having been ignorant of the order of postponement proceeded to sell the property and the decree-holder allowed the sale to proceed, and himself became the purchaser and was put in possession. The judgment-debtor sued to have the sale set aside. It was held that the judgment-debtor was entitled to a decree in this suit to have the property reconveyed to him on his paying to the decree-holder within a time to be fixed the amount due under the decree. *Gangapershad Sahu v. Gopal Singh*.⁽¹⁾

Decree-holder was directed to reconvey on payment of the debt by the judgment debtor.

A. H.
Suit to set aside court sale on the ground that the decree and the proceedings

(n) Z and his three minor sons were joint owners of a village which Z hypothecated by deed of simple

(1) I. L. R., 11 Cal., 136.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year	

mortgage to *J*. Subsequently *Z* executed another deed of mortgage to *J*, part of the consideration whereof was the cancellation of the former bond which was paid off and extinguished accordingly. *J*, however, fraudulently caused it to appear from the novating document that the former mortgage was still alive, and, after the death of *Z*, put the bond in suit against *Z*'s widow, who, being ignorant of the fraud, confessed judgment as guardian of her minor sons. The entire rights and interests of *Z*'s heirs were sold in execution of the decree so obtained by *J*. Subsequently the fraud was discovered, and *Z*'s sons brought a suit to set aside the execution sale, and to recover possession of the property first mortgaged. In regard to three-fourths of this property, they prayed that possession might be awarded to them by establishment of their right and share by amendment of the revenue papers. In regard to the remaining one-fourth, they prayed for possession by right of inheritance to *Z*, by cancelment of the execution-sale and of the fraudulent decree. They further alleged that they had first become aware of the fraud upon the day when they obtained from the Registration office a copy of the novating instrument in which the fraudulent entries were contained. It was held that the Law of Limitation applicable to the case was not that contained in Article 12, nor in Article 144, but that contained in Article 95 of schedule 2, of the Limitation Act, inasmuch as fraud vitiates all things and prevents the application of any other law of limitation than that specially provided for relief from its consequences. *Natha Sing v. Jodha Singh*.⁽¹⁾

(o) *Dwarkanath Bhooya v. Rajah Ajoodhyaram Khan*, was regular appeal, 257 of 1872, decided on the 22nd of

thereon were fraudulent, is not governed by this Article. (May 1894.)

Fraud would entitle a person affected by fraudulent sale to the benefit of section 18.

(1) I. L. R., 6 All., 406.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

December, 1873. In this case, which also proceeded upon the fraudulent sale to McArthur, it was held by Markby and Birch, J. J., that where the allegations in a plaint sufficiently stated that the plaintiffs being entitled to property and being in enjoyment thereof, were ousted therefrom under color of a fictitious revenue sale in pursuance of fraudulent contract, the fraud being so contrived as to make plaintiffs believe that they had no right of action at all, and the allegations were proved, the fraud would entitle the plaintiffs to claim the benefit of section 9 of Act XIV of 1859 corresponding to section 18 of the Act of 1877.⁽¹⁾

If setting aside execution sale was only collateral to the main object of the suit, it is not necessary that the suit should have been filed within one year from sale.

(p) After the death of the widow of K, the plaintiff sued as the heir of K, to recover certain immoveable property alleged to have been granted to the widow for life by K, for her maintenance. It appeared that in execution of a decree obtained against the plaintiff in a previous suit, in which, upon the widow's death, he was sued as representing the estate of the widow, the property in question was sold, notwithstanding objection taken by the present plaintiff that the property was that of K. The plaintiff's suit was filed more than a year after the execution sale, and it was objected that it was therefore barred under this Article. It was held, that it was not necessary that the suit should have been filed within one year from the date of the execution sale because the setting aside the execution sale was only collateral to the main object of the suit, and the present plaintiff was not a party in her own character to the suit in execution of the decree in which the property was sold. *Kali Mohun Chuckerbutty v. Anandamoni Dabee*.⁽²⁾

(1) I. L. R., 2 Calc., 8.

(2) 9 Calc., L. R., 18.

Description of suit.	Limit of	Time from which period begins to run.
	PART IV. One year.	

(q) In *Suryanna v. Durgi*,⁽¹⁾ the land of *D* was improperly sold in execution of a decree of a Civil Court obtained against *S* for arrears of revenue by the assignee of the revenue of the lands of *D* and *S*. The suit was brought by *D* to recover her land from the purchaser at the court sale. It was held that the suit, not having been brought within one year from the date of the confirmation of the sale was barred by this Article.

Suit to set an improper sale brought one year after confirmation held barred.

(r) In *Trimbak Bāwā v. Nārāyan Bāwā*,⁽²⁾ plaintiff's father's right to a third share of the management of certain lands granted to his father for the maintenance of the worship of a God of a temple was declared by a decree in a suit against the plaintiff's uncle and the uncle's son. The decree directed the plaintiff's father to pay their costs, for which the plaintiff's father's one-third share was sold in auction in January, 1870, and the purchaser resold it to another son of the plaintiff's uncle in May, 1870. The plaintiff filed this suit in August, 1879, against both the sons of his uncle, who claimed the exclusive management, to recover his share of the management. It was not disputed that the trust reposed in the judgment-debtor could not be attached and sold in execution of a decree against him. Sargent, C. J., being of opinion that where the founder of an endowment vested in a certain family the management of his endowment, each member of such family succeeds to the management, *per formam doni*, held that on plaintiff's father's death, the plaintiff's right to succeed to the management in this case was quite unaffected by any proceedings in execution against his father during his lifetime.

Son's suit to succeed to temple management brought one year after court sale of father's right, allowed on the ground that sale did not affect the son's right.

Observations of Sargent, C. J.

(s) The sale of tarwad property in execution of a decree passed against a Karnavan, in a suit brought

Clause (a) inapplicable to a junior member's suit to cancel court sale made

(1) I. L. R., 7 Mad., 258. | (2) I. L. R., 7 Bom., 188.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

as a personal
personally.
(July 1884.)

against him without alleging in the plaint that he was sued as such and that the debt was binding on the tarwad is not binding on the members of the tarwad. Therefore this Article cannot apply to a suit brought by the junior members of the tarwad to recover the land sold. *Haji v Atharaman* (1)

Suit by vendee of an auction purchaser's right, for land held by defendant as auction purchaser does not fall under this Article.
(Sept. 1881.)

(t) In *Venkata Narasiah v Subbamma*, (2) plaintiff sued to eject the defendant in 1879, and recover lands which he had purchased from a widow whose deceased husband had acquired it at a court sale. The defendant pleaded limitation on the ground that her deceased husband had purchased the same lands at a court sale in 1876. The Lower Courts held that the suit was barred under this Article as it was substantially brought to set aside the court sale. It was held by the High Court that as the plaintiff's vendor was not a party to the decree or the execution proceedings under which the defendant's husband purchased the property, it was not necessary for the plaintiff in this suit to set aside the sale, and that it is not enough that the party in possession is a purchaser at a court sale, but it must also appear that the plaintiff is bound to set aside that sale before he could recover.

Plaintiff is not bound to set aside court sale.

Suit by auction purchaser either for property as per his certificate or for refund of purchase money if possession of entire property cannot be given to him.
(April 1885.)

(u) In *Mahomed Sayad Phaki v Navroji Balabhai*, (3) on the 17th November, 1877, a certain piece of land described in the proclamation of sale as "Survey No. 294, Pot No. 3, measuring 24½ gunthas," the boundaries of which were also set forth, was sold by auction in execution of a decree obtained by the 1st defendant against defendants Nos. 2, 3 and 4, and purchased by the plaintiff. The boundaries, as stated, really included another piece of land, Survey No. 294, Pot No. 4, which comprised 3

(1) I. L. R., 7 Mad., 512. | (2) I. L. R., 4 Mad., 178.

(3) I. L. R., 10. Bom., 214.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART. IV. One year.	

acres $2\frac{1}{4}$ gunthas. This latter piece of land was put up for sale on the following day and was purchased by defendant No. 5. On 28th November, 1877, the plaintiff applied to the court to have the sale set aside and his money returned unless he was put in possession of all the land included in the boundaries mentioned in the proclamation; but his application was refused, and the sale was confirmed on 20th July, 1878. The plaintiff on the 3rd July, 1881, brought the present suit, praying that he might be put into possession of the land as described in the certificate of sale, which was identical with the proclamations, and included Pot No. 4, or that the 1st defendant might be ordered to pay him the amount of his purchase-money with interest. Both the Lower Courts rejected the claim as barred. It was held that the suit regarded as one to set aside the sale, was barred by clause A of this Article. It was further held that the suit regarded as one for compensation was not barred, as 3 years had not elapsed since the confirmation of the sale when the suit was brought; Article 36 applying only to suits for compensation for tortuous acts independent of contract; but that the claim for compensation was not maintainable, as the property offered for sale was sufficiently identified by the description as "Survey No. 294, Pot No. 3, containing $24\frac{1}{4}$ gunthas," and the statement of boundaries, so far as it was inaccurate, might be properly regarded as *fulsa demonstratio*.

Suit regarded as one to set aside sale was held barred by this Article.

Suit regarded as one for compensation was held not barred as 3 years had not elapsed from confirmation of sale. It does not come under Article 36.

(v) In *Abul Munsoor v Abdool Hamid*,⁽¹⁾ *M* sold to *S* her rights under a decree for mesne profits which she had obtained against *A* and two other persons, and *S* thereupon proceeded to execute the decree against *A*'s property, and that property was sold in execution of the decree ob-

Plaintiff's suit for possession of property purchased by his 2 joint debtors through another in execution at the instance of the assignee of the decree benami

(1) I. L. R. 2, Calc., 98.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

for them, is a suit to set aside sale and falls under this Article. (August 1876.)

Decree though voidable, sale under it is binding.

Suit to set aside fraudulent deed under color of which a sale was made was held not affected by one year's rule.

Suit was not to set aside sale for irregularity or for any other matter referring to sale.

Suit to set aside Revenue sale should be brought within one year from the time it becomes conclusive.

tained by *S*, and was purchased by *B*: but in a suit brought by *A* for a declaration that *S* was not the real purchaser, the court found that *S* had in fact purchased the decree benami for *A*'s two joint-debtors, and that consequently he had no right to execute it against the property of *A*. In a suit brought by *A* against *B* in 1874, for the purpose of recovering the property, it was held, that the purchase of the benefit of the decree by *A*'s joint debtors, although it had the legal effect of satisfying the judgment-debt did not affect the decree itself. The decree was not void, but only voidable and the sale under it binding on *A*. The suit, therefore, was in effect, a suit to set aside a sale under a decree within the meaning of clause 14 of schedule 2 of Act IX of 1871, and in as much as it was not brought within one year from the date of the sale, was barred.

(W) In *Baboo Kishen Bullub Mahatab v Roghoonundun Thakoor*⁽¹⁾ the suit was to set aside a fraudulent sale which was followed by a collusive decree, and a sale in execution of the property purporting to be conveyed by the fraudulent deed of sale. The court, therefore, held that the one year's rule did not apply. The suit was not one to set aside a sale in execution either on the ground of irregularity or other matters referring to the sale itself, but to get rid of the document which alone made the sale valid as having been a fraudulent and collusive transaction. If the plaintiff proved his allegations of fraud, the sale in execution might stand as a sale of the rights and interests conveyed, which would in fact be nil.

(X) In *Karuppa v. Vasudeva*,⁽²⁾ the plaintiff's lands were sold for arrears of Revenue and bought in for Government in October, 1876, and sold again by Government in

(1) 6 W. R., 305

| (2) I. L. R., 6 Mad., 148.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

September, 1879. No sale certificate had been obtained after the sale in 1876, under Madras Act II of 1864, section 38. It was held that the revenue sale of 1876, was completed at the latest at the end of one month after the sale, and that non-compliance with sections 36 or 38 of the Madras Act did not affect the validity of the purchase, there being no provision to that effect. In *Raj Chundra Chuckerbutty v. Kinoo Khan*,⁽¹⁾ it was held that a suit to set aside a sale for Government Revenue must be brought within one year from the date when the sale becomes final and conclusive.

Sale completed at the latest at the end of one month after sale.

C. H. also held so.

(y) In *Baskarasami v. Sivasami*,⁽²⁾ plaintiff sues the defendants represented by the agent of the Court of Wards, to recover a certain village with three years' profits. By an agreement of July, 1868, the defendant's father, in consideration of the plaintiff's promise to renounce his claim to the zemindari, gave him the village in question and agreed to have the kist fixed on it. In 1869, the plaintiff, in consideration that a low kist was fixed, agreed that the village should not be registered in his name and separated from the zemindari. In 1871, plaintiff repudiating the agreements sued the defendant's father to recover the zemindari and his claim was eventually rejected by the Privy Council. In 1875, while the litigation was pending, the plaintiff, on the 7th of May, was called upon by the Revenue authorities to pay the arrears of rent due on the village, and as the arrears were not paid, the village was sold and the Collector, as the agent of the Court of Wards, purchased it on behalf of the defendants. The plaintiff brought this suit in 1883 to recover the village, alleging that the sale was illegal as the notice was not duly served upon him. It was held

Suit brought by a lessee or tenant of the zemindar to recover a village sold for arrears of rent due by him alleging that notice was not duly served upon him, was held barred.

(1) I. L. R., 8 Calc., 329. | (2) I. L. R., 8 Mad., 196.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. One year.	

that the sale was binding on him and that the suit was barred by limitation.

This Article does not apply to a suit to set aside fraudulent Revenue sale made for arrears of Revenue.

In *Venkatapathi v. Subramanya*,⁽¹⁾ plaintiff sought in April, 1883, to set aside the sale of certain land sold in October, 1881, for arrears of Revenue under Act II of 1864, (Madras) on the ground of fraud and to recover possession of land from the purchaser who was alleged to be a party to the fraud. The Lower Court rejected the suit as barred by this Article. It was held that the suit was governed by Article 95, and that this Article (12) which prescribes a period of one year for suits to set aside sales for arrears of Revenue is intended to protect *bond fide* purchasers only.

C. H.
In a suit by plaintiff to set aside Revenue sale as made when no arrears of Revenue were due, sale was held cancellable as one made without jurisdiction.
(Sept. 1888.)

(2) Section 33 of Act IX of 1859, provides: "no sale for arrears of Revenue or other demands realizable in the same manner as arrears of Revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of." In *Byjnath Sahoo v. Lalla Seetul Pershad*,⁽²⁾ a Butwara was decreed by the Civil Court which made provision in its decree for the payment of the expenses of partition by certain co-sharers indicated. On proceedings taken before the Collector in pursuance of the decree, he called upon certain co-sharers (not being those who were by the Civil Court ordered to pay the expenses) to pay the expenses, (Ameen's fees) remaining due; and on failure by such co-sharers to comply with this direction, the Collector put up their share for sale as for an arrear of Government Revenue. The co-sharers whose share was sold with-

(1) I. L. R., 9 Mad., 457. | (2) 10 W. R., F. B., 66.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

out making an appeal to the Commissioner of Revenue under section 33, Act XI of 1859, brought a suit to set aside the sale and to recover the property, alleging that there was nothing due which was recoverable as an arrear of Government Revenue, and that the provisions of the Act did not apply to the case. It was held that the suit would lie and that where there is no evidence of any arrears of Government revenue being due, the provisions of Act IX of 1859, do not apply as the sale cannot be said to have taken place under the provisions of that Act. Following the above decision, it was held in *Sreemant Lall Ghose v. Shama Soonduree Dossee*,⁽¹⁾ that the sale of an estate for arrears of Revenue, where no such arrears exist, is null and void, even though it is regularly conducted and the purchase is made *bond fide* and that a decree obtained for possession by the original owner is sufficient without a special declaration that the sale is annulled. This was followed in *Mungina Khatook v. The Collector of Jessore*.⁽²⁾ The same view was adopted in *Baboo Hur Gopal Doss v. Ram Gopal Sahee*,⁽³⁾ in which the court observe, that before the remuneration of an Ameen employed to effect a Butwarrah, can be levied from the parties concerned in the same manner as an arrear of revenue, it must be sanctioned by the Board and Government, and the periods and proportions in which it is to be levied must be determined by the Board.

(2-a) In *Nawab Sidhee Nazir Alikhan v. Ojoodhiyaram Khan*,⁽⁴⁾ the mortgagor in possession, and another having sought to deprive the mortgagor of his title to redeem by means of a secret purchase of the mortgaged estate between them including the fraudulent device of a

Sale when no arrears of Government Revenue are due cannot be said to have taken place under the Act IX of 1859.

Such sale being null and void decree for possession without annulling sale is sufficient.

Before Ameen's remuneration can be levied Board and Government should sanction it.

Mortgagor's suit for redemption many years after sale of property for arrears of Revenue held not affected by one year's rule as the sale was a device to effect a fraud.

(1) 12 W. R., 276.

(2) 12 W. R., 311.

(3) 13 W. R., 381.

(4) 5 W. R. P. C., 83.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	•

sale by auction for arrears of Revenue, such arrears being designedly incurred by the mortgagee in possession, it was held that a suit for redemption and for possession instituted many years after the sale for arrears was not barred by section 24 of Act I of 1845. If a mortgagee in possession fraudulently allows the Government Revenue to fall into arrears with a view to the land being put up to sale and his buying it in for himself, and he does, in fact, become the purchaser of it at the Government sale for arrears, such a purchase will not defeat the equity of redemption.

A co-sharer aggrieved by Revenue sale fraudulently brought about by another co-sharer might sue for re-conveyance of property, though one year allowed by Art. 14 of Act IX of 71 had elapsed.

(2-b) In *Bhoobun Chunder Sen v. Soonder Surma Mozoomdar*,⁽¹⁾ one of several co-sharers had fraudulently contrived to have an estate brought to sale for arrears of Revenue under Act XI of 1859, and purchased it in the Benami of his son. The plaintiffs as co-sharers sued to set aside the auction sale on the ground of fraud. It was held that the plaintiff could maintain the suit to have the property reconveyed though the period limited by Article 14 of the second schedule to Act IX of 1871, for a suit to set aside the sale had expired. Although there was a prayer for reversal of the auction sale, the court refused to set aside the sale, but gave the plaintiffs the relief which they sought by restoring them to the same position as they were before the sale. This ruling has been referred to in *Amirunessa Khatoon v. The Secretary of State for India in Council*.⁽²⁾

Order mentioned in clause (b) was held to mean an order of the nature of a decree or one made in judicial capacity.

(2-c) The order of a Collector or other Officer of revenue as the word is used in the latter portion of clause 3, of section 1, of Act XIV of 1859, means an order of the nature of a decree, or made by the Collector, or other Revenue officer in his Judicial capacity. Where a piece

(1) I. L. R., 3 Calc., 300. | (2) I. L. R., 10 Calc., 63.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

of land embraced within the operation of the Revenue Survey, and subjected to a defined assessment, was put up for sale by the Collector in consequence of the occupant refusing to pay a fine to be allowed to continue in occupation of it, and was purchased by one of the defendants, and the occupant, asserting that he had been wrongly dispossessed, sued to set aside the sale, and to be declared entitled to recover the land and retain possession of it, on condition of paying the assessment as settled upon it by the Revenue officers, but delayed bringing his suit until June, 1869, the sale having taken place in January, 1867, it was held that, though more than one year had elapsed from the date of the sale, the suit was not barred under the provisions of clause 3, section 1 of Act XIV of 1859. *Sakharam Vithal Adhikari v. The Collector of Ratnagiri.*⁽¹⁾

13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	One year ...	The date of the final decision or order in the case by a Court competent to determine it finally.
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(a) No. 15, Act IX; Sec. 1, Cl. 5, Act. XIV.) This Article is only a reproduction of the corresponding Article 5 of Act IX of 1871, which contained no provisions similar to those of Article 11 of the later Act (XV of 1877) consequently until the introduction of Act XV of 1877, question very frequently arose whether orders which were affected by the special limitation of one year provided for by the last 12 words of section 246 and last clause of section 269 of Act VII of 1859, fell within Article 15. The Calcutta High Court held that Article 15 was not a re-enactment of the repealed portion of section 246 of C. P. C.

Construction
of the Article by
C. H.

(1) 8 B. H. C. R. A. C., 219.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

of 1859, and that unsuccessful claimant might bring regular suits within the ordinary period allowed for this suit, (*Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry*),⁽¹⁾ while the Bombay High Court held otherwise. (*Krishnaji Vithal v. Bhaskar Rangnath*).⁽²⁾

Construction of
M. H. and A. H.

The Madras and the Allahabad High Courts, while agreeing with the Calcutta High Court in thinking that a suit for possession brought after an order passed under section 246 of Act VIII of 1859, was not a suit to set aside an order within the meaning of this Article, were, of opinion, that the repeal of the section of the old Code did not deprive that order of the character which attached to it when made (*Venkatachala v. Appathorai*)⁽³⁾ (*Badri Prasad v. Muhammad Yusuf*),⁽⁴⁾ or in other words, that the order operated as final adjudication upon the right of the parties to it until it was set aside by a regular suit.

To decide that a
suit falls with-
in this Article,
the test is
whether the
summary deci-
sion could be set
up as bar to the
suit.

(b) In *Lak Narain Singh v. Ranees Myna Kooer*,⁽⁵⁾ plaintiff sought to establish his title and recover possession of certain land as to which a summary decision had been given in favor of the defendant under Act XIX of 1841, which was enacted for the protection of moveable and immoveable property against wrongful possession in cases of successions. Section 17 of the Act provides, that "nothing contained in the Act shall be an impediment to the bringing of a regular suit." Peacock, C. J., observes; "if the summary order made under this Act is to be no impediment to bringing a regular suit, there is no necessity for setting aside that order. Then the question is within what time is the regular suit to be brought to try the title to land and to be put into possession of it? That summary order cannot be pleaded or set up as a bar to the

(1) I. L. R., 4. Calc., 610.

(2) I. L. R., 4 Bom., 611.

(3) I. L. R., 8 Mad., 134.

(4) I. L. R., 1 All., 381.

(5) 7 W. R., 199.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

maintenance of the suit to try the title and to be put into possession under that title.

(c) Second clause of section 9 of the Specific Relief Act of 1877, provides that "nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof." A decision passed under this section is no bar to the maintenance of a suit on title and the plaintiff need not seek for the cancellation of the order.

Decision under section 9 of the Specific Relief Act, 1877, is no bar to suit on title.

(d) A Hindu family being heavily oppressed with debts, ancestral and otherwise, the two elder brothers of the family, for themselves, and as guardians of their minor brother, under Act XL of 1858, applied to and obtained from the District Judge an order under section 18 of the Act, for the sale of several portions of the ancestral estate, and sold the same under registered deeds signed by the Judge. Within twelve years after the registration, the adopted son of the minor brother brought several suits against the purchasers to set aside the sales and recover back his share of the property alleging that the two elder brothers had made the sale fraudulently and illegally to satisfy personal debts of their own. It was held that a suit of this nature is not a suit to set aside an order of a Civil Court under Article 15, schedule 2, Act IX of 1871. *Sikher Chund v. Dulpatty Singh*.⁽¹⁾

Suit for property sold by guardian under Act XL of 1858, section 18, is not a suit to set aside an order under Article 15 of Act IX of 1871.

(e) In *Kallee Prosunno Mookerjee v. Sreenutty Toy-lash Moonee Debia*,⁽²⁾ plaintiff and defendant applied to the Judge for a certificate under Act XXVII of 1860, each asserting right under separate wills said to have been left by the deceased. The Judge granted certificate to the defendant. The plaintiff after one year from the order brought a regular suit for possession of the property

An order under Act XXVII of 1860 granting certificate to one of two rival claimants need not be set aside in a suit on title for property.

(1) I. L. R., 5 Calc., 363. |

(2) 8 W. R., 126.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

If the party failing to get certificate seeks to set aside the order, he must sue within one year.

under the will. Lock, J., observes "in a case under Act XXVII of 1860, the Judge has to try summarily the right of the parties to hold a certificate. Under that certificate, the party is enabled to collect debts due to the estate of the deceased, and his receipts for money recovered while he holds the certificate are a complete protection to the debtors. If the party who fails to get the certificate seeks to set the order aside, he must bring his suit within one year from the date of that order, and the effect of the decree in his favor would be to make the previous holder of the certificate accountable to him for monies collected; but if the party do not care to disturb that order, a suit brought by him to obtain possession of the property of the deceased upon proof of his title, is not barred because it is not brought within one year from the date of the order." In *Bai Kashi v. Bai Jamna*,⁽¹⁾ plaintiff applied in 1877, for a certificate of heirship to one T, her husband's uncle, who had died in 1876. The defendant opposed the application, and alleged that T had left a will in her favour. On the 28th July, 1877, the District Judge made an order rejecting the plaintiff's application and granting a certificate to the defendant. In 1879, the plaintiff brought the present suit, claiming to be entitled to the property left by T. It was contended (*inter alia*) for the defendant that the plaintiff's suit was barred, she having failed to apply to set aside the order granting the certificate to defendant within one year from the date of that order. The court of first instance overruled the objection, and awarded plaintiff most of her claim. But the Lower Appellate Court reversed the Lower Court's decree, holding the suit barred. It was held, restoring the decree of the court of first

(1) I. L. R., 10 Bom., 440.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

instance, that the plaintiff's suit was not barred. A certificate of heirship confers only the right of management of the property of the deceased, and is intended to give security to third persons in dealing with the person who claims to be the heir. Where the right of the person to whom the certificate is granted to be the heir of the deceased, is in controversy, there is no necessity to have the order granting him the certificate set aside, and the question whether the suit to determine the right claimed is in time, is to be determined by the sections of the Limitation Act relating to suits for the possession of property.

(f) In *Gogaram v. Kartick Chunder Singh*,⁽¹⁾ Peacock, C. J., observed in April, 1868, that a suit to recover money which has been erroneously paid to a rival decree-holder under section 270 of Act VIII of 1859, would lie, and that the suit was to recover the money from the defendant by setting aside the order of the Judge. In *Wooma Moyee Burmonya v. Ram Buksh Chettangee*,⁽²⁾ it was held in June, 1871, that a suit will lie by a prior attaching creditor to compel a decree-holder whose attachment is subsequent in date, to refund money obtained by him under an order of the Judge of a Subordinate Court in contravention of the provisions of section 270, Code of Civil Procedure, but it must be a suit to set aside the Judge's order.

Suit for refund of sale proceeds distributed under section 286 of C. P. C. 1883 should be treated as a suit for money by setting aside the order of a court.

Section 295, clause 5, to proviso C, expressly enacts "if all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets." This clause does not provide that the order shall be final as sections 283, 332, and 335 do.

(1) 9 W. R., 514.

| (2) 16 W. R., 11.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Suit to set aside rateable distribution made by court and praying for payment of the whole money and for redistribution held barred by this Article.

In execution of a decree against six persons, the plaintiffs had certain property brought to sale, the proceeds of which were brought into court. The defendants, who held five separate decrees against some of the persons against whom the plaintiffs' decree was obtained, applied to have the amount in court rateably distributed, and in accordance with an order of the court, dated 13th September, 1880, this was done, the proceeds being distributed in proportion to the amounts of the decrees. In a suit brought on 24th August, 1883, against the defendants on the allegation that the plaintiffs were entitled to the whole of the proceeds, or in the alternative for distribution on a different principle, it was held the suit was one to set aside the order, and not having been brought within one year from the date of the order, was barred by limitation under Article 13, schedule 2 of Act XV of 1877. *Gowri Prosad Kundu v. Ram Ratan Sircar*,⁽¹⁾ This case was distinguished from *Ram Kishan v. Bhawani Das*,⁽²⁾ in which the order having been passed without jurisdiction was a nullity. (*Vide Note I*, under Article 62).

Neither this Article nor Article 14 apply to an order of a Judge or Collector refusing to pass an order for want of jurisdiction.

(g) In *Kristodass Kundoo v. Ramkant Raj Chowdry*,⁽³⁾ a portion of certain land which was under mortgage was sold for arrears of revenue which the mortgagors neglected to pay. The defendants having held money decrees against the mortgagors, attached the surplus sale proceeds which remained in the Collector's Office. The mortgagee's application of May, 1876, for the release of the surplus sale proceeds was rejected by the Judge on the ground that he had no jurisdiction to determine the priority of claims to money in deposit in the Collector's Court. The mortgagee's application of May, 1876, to the Collector was rejected and an order was passed to the

(1) 1 L. R., 13 Cal., 159. | (2) 1 L. R., 1 All., 333.

(3) 1 L. R. 6 Cal., 142.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

effect that the money could not be paid to any person other than the mortgagors. The mortgagee sued the mortgagors in January, 1877, for money by a declaration of his lien, and obtained a decree, declaring that the properties do stand subject to the lien. The plaintiff in this case as assignee of the decree, proceeded to attach the surplus sale proceeds, and the defendant opposed it. The Judge, in August, 1877, declined to take any action for the reasons recorded in the order of May, 1876. The plaintiff brought this suit to set aside that order. It was contended that the suit was barred under Article 15 or 16 of Act IX of 1871, because it was not instituted within one year from the date of the order of the Judge or Collector. Prinsep, J., observes: "we have, however, no doubt that these articles do not apply, inasmuch as in neither case was there any order passed adverse to the mortgagee's right after any adjudication thereof. The orders passed simply amounted to a declaration, that neither the Judge, nor the Collector, considered that he had jurisdiction to act as desired. The general Law of Limitation for suits to establish a right would, therefore, apply to the present suit." *Mussamut Moomeedunniassa v. Mahomed Ali*,⁽¹⁾ was a suit to establish a right to a share in property in respect of which the Judge who received an application under Act XIX of 1841, an Act for the protection of moveable and immoveable property against wrongful possession in cases of successions refused to entertain it and referred the plaintiff to a regular suit without even citing the defendant. It was held that the suit may be brought within 12 years from the date of cause of action, and not within one year from the date of disallowance of the said application.

Order refusing to entertain an application under Act XIX of 1841.

(1) 1 W. R., 40

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Suit praying to set aside an order passed without jurisdiction is not governed by this Article.

Observations of Spankie, J.

(h) In *Ram Kishen v. Bhawani Das*,⁽¹⁾ certain property was attached by two decree-holders and sold at the instance of the creditor who had a charge thereon and sale proceeds were paid to him. The money decree-holder claimed preference as first attaching creditor, which was allowed by the Lower Court, but reversed in appeal, whereupon he was paid the money which the other decree-holder was directed to refund. He then brought a regular suit to establish his prior right to the money and for the cancelment of the Judge's order, alleging that the same was made without jurisdiction. It was contended that the suit was barred. Spankie, J., observes: "I was disposed to consider that clause 15 might apply. But on fuller consideration, I do not think it is applicable. A suit under this clause is brought to alter or set aside a decision or order of the Civil Court in any proceeding other than a suit where the court was competent to determine it finally. The court therefore must have jurisdiction, which the Judge had not when he reversed the Munsif's order giving the sale-proceeds to the plaintiff. The order therefore is of itself a nullity and could have no effect. But even if the Judge had had jurisdiction, I am doubtful whether the clause would have applied as the plaintiff asks for something more than the reversal, or, as he calls it, the nullification of the order." In *Debi Prasad v. Jafar Ali*,⁽²⁾ plaintiff's suit in the Revenue Court for a declaration that he was not liable to pay rent to the defendant was decided against him in 1865, and he continued payment of rent up to August, 1877, when he brought a suit in the Civil Court to have his proprietary title declared and the decree of the Revenue Court null and void. It was held that Articles 14 and 15 of Act IX

(1) I. L. R., 1 All., 333. | (2) I. L. R., 3 Bom., 40.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

of 1871 were not applicable, as there was no decree or order which the plaintiff was bound to have set aside within one year.

(i) In *Mussamut Aleo-Unissa v. Buldeo Narain Singh*,⁽¹⁾ it was held by Peacock, C. J., that the final decision, award, or order contemplated by clause 5, sec. 1, Act XIV of 1859, is a final decision of the court which has competent jurisdiction to determine the case finally, and not the order of a court superior to such court dismissing an appeal from the decision of such court for want of jurisdiction.

To set aside a final order, time runs from its date and not from that of the order passed on appeal.
(Feb. 1867.)

(j) In *Iyyasami v. Samiya*,⁽²⁾ an application was made under section 322 of the Code of Civil Procedure for possession of property and rejected and the applicant brought a suit to recover the property more than one year subsequent to the order rejecting the application. It was held that the suit was not barred either by Article 11 or Article 13 of schedule 2 of the Indian Limitation Act, 1877. The court observe, "the provisions of Article 11 in the second schedule to the Limitation Act do not apply in terms to a suit brought to test an order made under section 332 of the Civil Procedure Code, and we are not warranted in applying that Article to any suits other than those to which express reference is made in the Article. It is possible and was probable that mention of section 332 of the Code of Civil Procedure was omitted by oversight from this clause. Nor, in our judgment, is this suit governed by the provisions of Article 13, for that applies to decisions or orders passed in a proceeding other than a suit, whereas an order in an execution proceeding is an order in a suit. It may also be questioned whether this suit can be properly described as a suit to set aside

Suit by an unsuccessful claimant under section 332 of the C. P. C. is not governed by this Article. It is unnecessary to sue to have the order cancelled.

An order in an execution proceeding is an order in a suit and not an order in a proceeding other than a suit.

(1) 7 W. R., 151.

(2) I. L. R., 8 Mad., 82.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

an order, for it is a suit to establish the right of the plaintiff. The order under section 332 simply decided the question of possession, and is by the terms of that section made dependent on the result of the suit to establish the right. It is, therefore, unnecessary for the plaintiff to sue to have it cancelled."

Does not affect a plaintiff who was not party to the execution proceedings.

(k) Where the plaintiff was, by an order of the Civil Court in execution of a decree to which he was no party, ejected from the possession of a muttah, and he brought a suit more than three years afterwards to eject the legal representative of the person who was so put in possession, it was held that the suit was not barred under clause 5, section 1, Act XIV of 1859, as that clause is only applicable to orders which the Civil Courts are empowered to pass deciding matters of dispute properly raised for hearing and determination by a summary proceeding between the parties disputing. Appundya Ibram Sahib v. Mrs Maria Seth Sam.⁽¹⁾

14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year ...	The date of the Act or order.
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Suits falling under this Article had 6 years under Act XIV of 1859, sec. 1, clause 16.

(a) (No 16, Act IX); Act XIV of 1859 contained no express provision for a suit to set aside an official act, and consequently in *Kebul Ram v. The Government*,⁽²⁾ which was a suit to set aside an order of the Commissioner of Chotanagpore, directing the plaintiff to pay Government Revenue at a certain rate, it was held that the suit fell under clause 16, section 1, Act XIV of 1859 which allowed six years for suits not expressly provided for.

(1) 4 M. H. C. R., 297. | (2) 5 W R., 47.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

(b) *Luchmon Sahai Chowdhry v. Kanchun Ojhain*,⁽¹⁾ was brought by a purchaser of certain land, praying to set aside an order passed by Revenue authorities under Bengal Act VII of 1876, to register his name as proprietor and also for a declaration of right and title to, and confirmation of possession in property. It was held that this Article had no application, because it was simply a suit for declaration of plaintiff's title and the prayer for the reversal of the order was a mere surplusage. It has been further held that a Civil Court has no power to set aside an order passed under the Land Registration Act, VII of 1876, B. C.

Suit for title brought on Collector's refusal to register the plaintiff's name as owner, not affected by this Article.

15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	One year ...	When the attachment, lease or transfer is made.
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(a) (No 17, Act IX; sec. 1, clause 4, Act XIV.) Clause 4, section 1 of Act XIV of 1859, has been split into Articles 15 and 16 in this schedule. In *Chittro Narain v. The Assistant Commissioner of the Southal Pergunnahs*,⁽²⁾ it was held that the power vested in the authorities by Regulation XXIX of 1814 to transfer the tenure of a Ghatwal who becomes a defaulter, is not put an end to by the money being offered before the tenure is actually made over to another person, and that the suit comes within clause 4, section 1, Act XIV of 1859.

Suit to set aside transfer of tenure under Regulation XXIX of 1814, was held to fall under cl. 4, sec. 1, Act XIV of 1859.

16.—Against Government to recover money paid under protest in satis-	One year ...	When the payment is made.
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(1) I. L. R., 10 Calc., 525.

(2) 14 W. R., 203.

Description of suit.	Period of limitation.	Time from which period begins to run.
faction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	PART IV. One year.	

Does not apply to a suit for money paid on account of admitted liability.

(a) (No. 18, Act IX; sec. 1, cl. 4, Act XIV.) In *Shadee Lal v. Musumat Bhawanee*,⁽¹⁾ it was held that clause 4 of Section 1 of Act XIV of 1859 (which corresponds with this Article) was not applicable, where the Revenue for recovery of portion of which the suit was brought was a payment made to the Government on account of a clear and admitted liability, the object being to save the estate from sale.

Suit brought within 12 years to declare a rent free land which the Collector assessed, held not barred and one year's rent only was held recoverable.

(b) Where a person claiming to hold land free of Government assessment was compelled by the Collector to pay the same and he afterwards brought a suit to establish his right, it was held that the cause of action first arose when the right was actually interfered with by the Collector compelling payment of the rent, and that as the suit was brought within twelve years from that date, it was not barred, and although he has paid the assessment for several years under protest, one year's arrears alone were recoverable under Act XIV of 1859, section 1, clause 4. *Bhujang Mahadev v. The Collector of Belgaum*.⁽²⁾

What will amount to payment "under protest."

(c) In *Kebul Ram v. The Government*,⁽³⁾ Seton-Karr, J., observes, an appeal to the higher authority, set over the authority which disallows any request, is a native's way of protesting. It is his mode of attempting to vindicate his rights, and what he does when the attempt has failed, may be said, looking to native modes of thought and action, to be done under "protest." A law, it seems to me, should be interpreted according to the feelings and

(1) 2 N.-W. P. H. C. R., 52. | (2) 11 B. H. C. R., 1.

(3) 5 W. R., 47.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

habits of those for whom it is meant, and this remark particularly applies to inhabitants of non-Regulation Provinces, who are admittedly accustomed to a more patriarchal kind of rule than the residents of more civilised tracts. The plaintiff had stated his objections in vain to both Collector and Commissioner, and I should not expect any further or more formal protest on his part.

Payment after unsuccessful appeal makes it "payment under protest."

(d) In *Krishnamma v. Achayya*,⁽¹⁾ plaintiff sued in 1877 for a piece of ground said to have formed a part of his holding. The defendant contended that the land was not included in the plaintiff's uncle's puttah, but was classed as poramboke at the time of demarcation in 1860, and was assigned to him by the Collector in 1875. The District Judge treating the suit as one brought to set aside the official act of the demarcation officer, rejected the suit as barred by this Article. It was held that the suit was not necessarily to set aside an official act, but one to recover immoveable property, and that the plaintiff has only to show that he has had possession within 12 years prior to the suit. It is observed that it was not shown that the demarcation interfered with plaintiff's possession so as to give rise to a cause of action in 1860.

Suit to recover land as part of plaintiff's holding but wrongly included by demarcation officer as poramboke does not fall under this Article.

17.—Against Government for compensation for land acquired for public purposes.	One year ...	The date of determining the amount of the compensation.
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(a) (No. 19, Act IX.) *James Hills v. The Magistrate of Nuddea*,⁽²⁾ was a suit for compensation for certain lands taken by the Magistrate for roads. The plaintiff had applied for compensation in the usual course, but, after various delays on the part of Government, had been refused compensation and referred to the Civil Court after

Suit after one year, though due to various delay by Government in disposing of plaintiff's applications, rejected as barred.

(1) I. L. R., 2 Mad., 306.

(2) 11 W. R., 1.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	•

the period of limitation had expired. It was held—(1), that the plaintiff was not entitled to any consideration for his delay in instituting a suit, which was the remedy prescribed by law ; and that the mere fact of Government receiving Revenue for the estate in which the lands are situated did not prevent the law of limitation operating in its favor, as it would in the case of any private individual in adverse possession ; (2), that plaintiff's cause of action arose from the time when he was dispossessed, and not from the date when his application for compensation was rejected ; and (3), that a letter from the Commissioner of Revenue, expressing his willingness to recommend to Government to pay for the land, was not an acknowledgment in writing within section 4, Act XIV of 1859.

18.—Like suit for compensation when the acquisition is not completed.	One year ...	The date of the refusal to complete.
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When acquisition is not completed Collector should determine the amount of compensation for damage if any.

(a) (No. 20, Act IX.) Under section 54 of Act X of 1870, the Government are not bound to complete the acquisition of any land except in the case provided for by section 44, which relates to lands rendered permanently unfit to be used. Clause 2, section 54, provides that when the Government declines to complete the acquisition, the Collector is bound to determine the amount of compensation due for the damage, if any, done to the land by the clearing, digging, or marking it out, and to pay such amount to the person injured.

19.—Compensation for false imprisonment.	One year ...	When the imprisonment ends.
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What constitutes false imprisonment.

(a) (No. 21, Act IX). See *Note J*, under section 23, page 203. "To constitute the injury of false imprisonment, there are two points requisite : 1. The detention of

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

the person ; and 2, The unlawfulness of such detention. Now every confinement of the person is an imprisonment, whether it be in a common prison or in a private house, or in the stocks, or even by forcibly detaining one in the street ; (2 Inst. 589). Unlawful, or false imprisonment consists in such confinement or detention without sufficient authority ; which authority may arise either from some process from the courts of justice, or from some warrant from a legal officer having power to commit under his hand and seal, and expressing the cause of such commitment ; or from some other special cause warranted for the necessity of the thing,—such as the arresting of the felon by a private person without warrant, or the imprisonment of mariners for the public service.⁽¹⁾ The Indian Statute does not provide against execution even of Civil processes on Sundays. This Article only applies to suits for *compensation* and not for the *removal* of the injury.

(b) In *Bheema Charlu v. Danti Murti*,⁽²⁾ it was held that where a wrong person is arrested and imprisoned under a decree to which he was no party, the person setting the court in motion is not liable for such arrest and imprisonment if he did not obtain the process fraudulently or improperly.

When a wrong person is arrested under decree the party moving the court is not liable if he did not obtain process fraudulently.

20.—By executors, administrators or representatives under Act No. XII of 1855 (*to enable the executors, administrators or representatives to sue and be sued for certain wrongs.*)

One year ...

The date of the death of the person wronged.

(a) (No. 12, Act IX.) This Article applies to suits by executors, &c., while Article 33 applies to suits against

Act XII of 1855 enables executors of a deceased person to

1) Stephen's Commentaries, Vol. III, p. 507. | (2) 8 M. H. C. R., 38.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

sue and be sued in certain cases.

them. Section 1 of Act XII of 1855, enables executors, administrators or representatives of any deceased person to sue "for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person," and be sued for any wrong committed by him in his lifetime for which he would have been subject to an action. In both cases, the act provides that "such wrong shall have been committed within one year before his death."

Act XII of 1855 does not apply to wrongs which do not survive to the representative of a deceased person.

(b) *Sreemutty Chundermonee Dasse v. Santo Moonnee Dasse*,⁽¹⁾ was a suit to recover the value of an elephant wrongly sold by the defendant's husband since deceased. It was held that Act XII of 1855 does not apply to wrongs which do not survive to the representatives of a deceased person. The heir of a deceased husband is liable to make good the wrong committed by the husband. The plaintiff's right of suit does not abate by the death of the husband, but survives against his heir. In *Nujuf Ali v. Patterson*,⁽²⁾ it was held that Act XII of 1855 applies to suits for wrongs, which according to the law then in force did not survive to or against executors, administrators or representatives. A suit for recovery of moneys due by an agent of the Official Assignee of an insolvent debtor's estate, and for delivery of certain papers and documents belonging to such insolvent's estate, will lie against the legal representative of such agent after his decease and the right of action will not expire on his death.

It applies to suits for wrongs which did not survive to or against executors, &c.

Rights of action surviving to and against executor, &c., of a deceased person.

(c) Sec. 268, Act X of 1865. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a per-

(1) 1 W. R., 251. † (2) 2 N.-W. P. H. C. R., 103.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

son at the time of his decease, survive to and against his executors and administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it, would be nugatory. A sues for a divorce. A dies. The cause of action does not survive to his representative. (See the corresponding section 89 of Act V of 1881).

21.—By executors, administrators or representatives under Act No. XIII of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.</i>)	One year ...	The date of the death of the person killed.
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(a) (No. 13, Act IX.) Act XIII of 1855, provides compensation to families for loss occasioned by the death of a person by actionable wrong. Section 1 runs thus: Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime. And it is enacted further, that every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the

A suit is now maintainable against a person who by his wrongful act neglect or default caused the death of another person.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

name of the executor, administrator, or representative of the person deceased; and in every such action the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the court by its judgment or decree shall direct. In any such suit, the executor, &c., may insert a claim for, and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default.

- 22.—For compensation for any other injury to the person. | One year ... | When the injury is committed.

This Article relates to injuries affecting a man's limbs, &c.

(a) (No. 22, Act IX; sec 1, clause 2, Act XIV.) This Article relates to immediate or consequential injuries affecting a man's limbs or body or health. Articles 23, 24 and 25 separately provide for injuries to personal liberty and to reputation. Bodily injury, though the consequence of a lawful act or a mere mischance may be a tort, and the existence of an evil intention in the mind of the wrong-doer is not essential. So much so, that even a lunatic will be civilly answerable for his torts, though wholly incapable of design.⁽¹⁾

Intention on the part of the wrong-doer is not necessary.

- 23.—For compensation for a malacious prosecution. | One year ... | When the plaintiff is acquitted, or the prosecution is otherwise terminated.

When complaint is the only act done, the date of the

(a) (No. 23, Act IX.) In *Mudvirapa Kulkarni v. Fakirapa Kenardi*,⁽²⁾ A on the 26th of July, 1878, com-

(1) Collet on Torts, para. 31. | (2) I. L. R., 7 Bom., 427.

Description of suit	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

plained to the Magistrate that *B* committed theft of his grain. The Magistrate, of his own motion, attached the grain on the 10th of August, 1878, pending inquiry into the complaint, then proceeded with the inquiry and dismissed the complaint, but continued the attachment pending the decision of the Civil Court to which he referred the parties. *A*, in 1879, brought a suit against *B* to establish his title to the grain, which was finally rejected on the 21st of June, 1880, and *B* recovered his grain on the 30th of September, 1880, but in a damaged condition. *B*, on the 13th of November, 1881, sued *A* for damages for wrongful detention of his grain, and its consequent deterioration in quality and value. It was held that the date of the complaint was the date of the wrong, and limitation ran from that date, or, at the latest, from the date of the attachment, and that *B*'s suit was therefore barred, whether the period applicable was one year under Article 23, or two years under Article 36 of schedule 2 of Act XV of 1877. West, J., observes: "in the case of a prosecution the conduct of the prosecutor is looked on as a continuous act prolonged until the close of the case, and limitation is to be computed from that point (Act XV of 1877, sch. 2, Art. 23); but when the complaint made is the only act done, the date of the complaint is that of the wrong—see *Huree Narain Mytee v. Ojoodhya Ram Sein* (10 Cal. W. R., 308). And the Limitation Act does not prescribe or allow, (see *Goma Mahad Patil v. Gokaldas Khimji*; I. L. R., 2 Bom. 74) any deduction on account of irregular proceedings of a Magistrate not moved by the defendant in the suit."

complaint is that of the wrong.

In the case of a prosecution time runs from the close of the case.

Act does not allow deduction on account of irregular proceedings of a Magistrate.

(b) In *Bhyrub Chunder v. Mohendro Chuckerbutty*,⁽¹⁾ it has been observed that if a complaint came before a

Cause of action would not accrue until prosecution ends in plaintiff's favour.

(1) 13 W. R., 118.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Time held to run from final discharge of plaintiff and not from the date that charge was preferred.

criminal tribunal competent to determine the matter upon its merits, then, no doubt, a cause of action would not accrue to the plaintiff until those merits had been determined by that tribunal in his favour. A suit cannot be brought for a malicious prosecution, when the prosecution ends in a conviction. *Quære*.—When a complaint is dropped by the prosecutor while in the hands of the police, does the cause of action to the party charged in a suit for damages accrue at the time when the information was first laid. In *Obedul Hossein v. Goluck Chunder*,⁽¹⁾ it was held that for a suit for damages for malicious prosecution, time runs from the date of the final discharge of the plaintiff from custody and not from the date on which the charge was preferred. This case was distinguished from *Hari-narayan Maiti v. Ajodhya Ram Shi*,⁽²⁾ in which plaintiff's house was searched and his business interrupted, and he in various ways injured upon a certain untrue and malicious statement made by the defendant before the Magistrate on the 23rd January, 1866. Plaintiff sued for damages in March, 1867. As there was nothing to show that any of the resulting damages which would constitute a cause of action occurred within 12 months previous to the suit, the plaintiff's claim was held barred.

24.—For compensation for libel. | One year ... | When the libel is published.

Libel defined. (a) (No. 24, Act IX; sec. 1, cl. 2, Act XIV.) A libel "may be defined to be some writing, picture, or the like, containing malicious and defamatory matter (besides defamatory libels, there are those of a blasphemous, seditious, or immoral kind, as to which *vide post*, Vol. IV, p. 344.)"⁽³⁾

(1) 8 W. R., 443.

(2) 1 Beng., S. N., 17.

(3) Stephen's Commentaries, Vol. III, p. 503.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

(b) In *Robert and Charriol v. Lombard*⁽¹⁾ it was held that limitation runs from the time when the libel is published, and not when the plaintiff becomes aware of it.

Time runs from the date of publication.

(c) "In an action for libel brought in 1848, the statute was pleaded to the first count, which complained of a libel printed and published in the *Weekly Despatch*, to wit, on the 19th September, 1830, and it was held that the plea was negatived by proof of the sale of one copy just before the action commenced."⁽²⁾

Sale of one copy of the libel within one year of the suit will negative the plea of limitation.

25.—For compensation for slander.

One year ...

When the words are spoken, or, if the words are not actionable in themselves when the special damage complained of results.

(a) (No. 25, Act IX; sec 1, clause 2, Act XIV.) "The principal cases in which words will be considered defamatory, so as to amount to the legal injury of which we now speak, are as follows: *viz.*, where a man utters anything of another (which may either endanger him in law, by impeaching him of some punishable crime,—as to say that he hath poisoned another, or is perjured; or which may exclude him from society,—as to charge him with having an infectious disorder tending so to exclude him; or which may impair or hurt his trade or livelihood,—as to call a tradesman a bankrupt, a physician a quack, or a lawyer a knave;) or which may disparage him in an office of public trust,—as to say of a Magistrate that he is partial and corrupt."⁽³⁾

Words of slander which are in themselves actionable.

(b) "If I say of a Commission Agent, that he is an unprincipled man, and borrows money without repaying

Words which are not actionable in themselves till special damage results.

(1) 1 Ind. Jur., N. S. 192. | (2) Darby and Bosanquet, p. 29.

(3) Stephen's Commentaries, Vol. III, p. 499.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

it, this is not in itself actionable; but if I say this to a person who was going to deal with him, and he forbear to do so in consequence of its being said,—here, there being special damage, an action will lie against me. So if I impute heresy or adultery to another, if he can show that he was thereby exposed to some temporal damage, he may sue me in a court of common law and recover damages for such injury; and the case is the same if I impute unchastity to a woman, and she can shew that she has thereby lost a marriage or some pecuniary advantage.

Slander of title. And in like manner, if I slander another man's title, by spreading (not in the *bonâ fide* assertion of my own title) such injurious reports (as, if true, would deprive him of his estate—as to call the issue in tail, or one who hath land by descent, a bastard,—it is actionable, provided any special damage accrues to the proprietor thereby; as if he loses an opportunity of selling the land.”)⁽¹⁾

In such cases limitation runs from the time that special damage results.

(c) Cases of slander actionable when the special damage complained of results, come under section 24. The plaintiff it is apprehended cannot recover subsequent damages by series of subsequent actions. See *Land v. Walker* in (*Note D*, under section 24, p. 208.)

26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year ...	When the loss occurs.
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Action under this Article is brought to repair the outrage done to parental feeling. A master may sue for debauching his servant.

(a) (No. 27, Act IX.) A parent is enabled to claim redress for a battery, or other ill usage inflicted on his child or even for the seduction of his daughter. Where a parent is plaintiff in a case of seduction, the courts inclined to relieve him, as much as possible, from any difficulty connected with proof of the loss of service; considering

(1) Stephen's Commentaries, Vol. III, pp. 500-501.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

the action as brought in substance to repair the outrage done to parental feeling,—and it has been held, therefore, in such an action the mere residence of the child with him, at the time, affords sufficient proof that the relation of master and servant existed between them. No action for seduction can in any case be maintained by the daughter herself.⁽¹⁾ A master standing in *loco parentis* may, according to English Law, maintain an action for debauching his servant.

(b) In *Ram Lal v. Tula Ram*,⁽²⁾ A Hindu father sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant. The daughter was a married woman, deserted by her husband and at the time of her abduction, she was living with her father attending to his household affairs and rendering him services. Stuart, C. J., was of opinion that the suit was maintainable under the circumstances, while Oldfield, J., held otherwise. Stuart, C. J., observes: "now it appears to me that it would be a very unsatisfactory state of the law in this country if such conduct against the peace and honor of respectable families were allowed to pass without a remedy, and I think we must for that remedy hold that the suit at the instance of the father was properly and validly entertained by the Lower Courts." Oldfield, J., while holding that the father can recover the costs of prosecuting the defendant, observes: "the claim, however, in respect of the loss of the daughter's services stands on quite a different footing. It has evidently been brought with reference to the law of England as to an action for seduction, where the basis of the action is founded, not upon the wrongful act

A. H.
Hindu father's
suit for compensation for the
loss of his abducted daughter's
service, was held maintainable.
(August 1881.)

Observations of
Stuart, C. J.

Observations of
Oldfield, J.

(1) Stephen's Commentaries, Vol. III, p. 567.

(2) I. L. R., 4 All., 97.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

of the defendant in the seduction, but upon the loss of service of the daughter, in which service the parent is supposed by a fiction to have a legal right or interest. It would be very undesirable to introduce a fiction of this kind into the law of this country." Hindu women's "position is not one of servitude from which any contract of service can be implied."

27.—For compensation for inducing a person to break a contract with the plaintiff.	One year ...	The date of the breach.
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Inveigling or hiring another's servant is an injury to master.

(a) (No. 28, Act IX.) The inveigling or hiring another's servant which induces a breach of contract is an injury to the master and his action for compensation comes under this Article.

Defendant persuading third person to break contract is an actionable act if injury ensues from it.
(Feb. 1881.)

(b) In *Bowen v. Hall*,⁽¹⁾ it was held that an action lies against a third person who maliciously induces another to break his contract of exclusive personal service with an employer, which thereby would naturally cause, and did in fact cause, an injury to such employer, although the relation of master and servant may not strictly exist between the employer and employed. Brett, L. J., observes: "the act complained of in such a case as *Lumley v. Gye* (2 E. and B. 216; 22, L. J., Q. B. 463), and which is complained of in the present case, is therefore, because malicious, wrongful. That act is a persuasion by the defendant of a third person to break a contract existing between such third person and the plaintiff. It cannot be maintained that it is not a natural and probable consequence of that act of persuasion that the third person will break his contract. It is not only the natural and probable consequence, but by the terms of the pro-

(1) L. R., Q. B. 6, p. 333.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year	

position which involves the success of the persuasion, it is the actual consequence."

(c) In *Meer Mahomed Kazem v. Forbes*,⁽¹⁾ it was held that a suit by an indigo planter against an instigator brought under section 3, Act X of 1836, is governed by the six years' limitation provided by clause 16, section 1, Act XIV of 1859. In this case it was alleged that at the instigation of the defendant, the plaintiff's ryots refused to grow the indigo for which they had contracted.

Inducing ryots to break contract with plaintiff to cultivate indigo.

28.—For compensation for an illegal, irregular or excessive distress.	One year ...	The date of the distress.
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(No. 29, Act IX.) Section 140 of the Bengal Tenancy Act VIII of 1865, provides for suits for compensation for wrongful distraint. This Act repeals Act VIII of 1869, B. C. which by sections 97 to 100 specially provided for distraint of crops and suits in respect of such distraint.

(a) In *Ladji Naik v. Musabi*,⁽²⁾ the Collector, under the Vatanor's Act 3 of 1874, ordered that a contribution should be paid by the holders of a part of the Shetsandi Vatan towards the annual emolument of the office holder. The defaulter's property was sold in May, 1881, as for an arrear of land revenue, and part of the sale proceeds was paid to the office holder. On the defaulter's appeal in the meantime, the Revenue Commissioner reduced the amount of contribution in December, 1881. The defaulter in April, 1884, sued to recover from the office holder the difference between what he had received under the Collectors order and what he ought to have received according to the Revenue Commissioner's order. It was held that the suit was governed by Article 62 and not by 28 or 29.

Suit for money paid in excess of what was since fixed in appeal does not fall under this Article, but falls under 62.

(1) 8 W. R., 257.

(2) I. L. R., 10 Bom., 665.

Description of suit.	Period of limitation.	Time from which period begins to run.
29.—For compensation for wrongful seizure of moveable property under legal process.	<p style="text-align: center;">PART IV.</p> <p>One year ...</p>	The date of the seizure.

Limitation commences from the date of seizure and not from the date of release of property.

(a) (No 30, Act IX.) In *Ram Singh Mohapattur v. Bhotro Manjee Sonthal*,⁽¹⁾ plaintiff's bullocks having been seized in execution of a decree obtained by defendant against third parties, plaintiff put in a claim and the bullocks were released on 15th January, 1874. On 15th January, 1875, plaintiff instituted an action for damages caused by the detention of the bullocks. It was held that the case fell under Act IX of 1871, schedule 2, Article 30, and that the suit was barred by limitation.

Suit for money wrongly taken under a decree is governed by this Article.

(b) *Jagjivan Javherdas v. Gulam Jilani Chandri*,⁽²⁾ was a suit brought to recover money wrongfully drawn in 1875 by the defendant from the Government Treasury in execution of a decree he had obtained against the plaintiff's father. The defendant in 1867, attached the allowance annually payable to the plaintiff's family, and the plaintiff having become entitled to the allowance from the death of his father in 1869, sued to recover what the defendant had drawn since. It was held that compensation for the money wrongly seized and for the loss of gain or interest upon it may blend in a single claim for compensation, and that in either case the limitation is one year.

30.—Against a carrier for compensation for losing or injuring goods.	<p style="text-align: center;">PART V.</p> <p>Two years...</p>	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Do. ...	When the goods ought to be delivered.

To suit for value of goods lost by Railway

(a) (Nos. 36 and 37, Act IX.) In *Mohan Sing Chawan*

(1) 24 W. R., 298.

(2) I. L. R., 8, Bom., 17.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

v. Henry Conder,⁽¹⁾ 563 bags of grain were made over to the defendants at Cawnpur and Nagpur, for carriage to Sholapur. All that was proved was, that the defendants delivered to the plaintiff, the owner of the grain, 512 bags only, having previously obtained from his agent receipts for the full number as arrived at Sholapur. In a suit by the plaintiff to recover the price of the bags not delivered, brought after more than two, but within three years of the time when the rest of the goods were delivered, the defendants claimed that the suit was barred by the provisions of this Article, as not having been brought within two years of the time when the loss occurred. It was held, that mere non-delivery of the bags was no proof of their loss, the onus of proving which as an affirmative fact lay on the defendants before they could claim the benefit of the special limitation of two years provided in this Article, and that the suit, therefore, was in time.

Company time runs from the date of announcement of such loss.

(b) In *Hassaji v. The East India Railway Company*,⁽²⁾ it was held that for a suit against a Railway Company by the consignee of goods (not sent on sample or for approval) for compensation for non-delivery, the period of limitation is not two years under this Article, but three years under Article 115.

Suit by consignee for compensation for non-delivery against Railway Company does not fall under this Article.

(c) In the *British India Steam Navigation Company v. Hajee Mahomed Esack & Company*,⁽³⁾ plaintiff claimed Rs. 6,304, compensation for value of goods short delivered. It was held that the Steam Navigation Company, though they are not common carriers for the purposes of Indian Carriers' Act, the operation of which is restricted to Inland Carriers, are nevertheless common Carriers, so long as the goods remained in their hands and undelivered, and that the

Suit against Steam Navigation Company for value of goods short delivered, does not fall under this Article.

(1) I. L. R., 7 Bom., 478. | (2) I. L. R., 5 Mad., 388.

(3) I. L. R., 3 Mad., 107.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

Observations of the court on Article 30.

Suit for compensation for the value of goods damaged by the company's negligence and destroyed by Magistrate's order.

Suit for and value of goods when the company failed to deliver.

suit was not governed by this Article, but by Article 115. The court observe: "looking to the terms of clause 30 and the place in which it is found in the schedule, we understand it to apply to suits for compensation for loss of damage to goods arising from malfeasance, misfeasance or non-feasance independent of contract. There may no doubt be reasons for prescribing a short period of limitation for suits against carriers, but the principle has not apparently been adopted. On the other hand, a shorter period of limitation has been in the earlier Limitation Acts provided for suits for tort than for suits for breach of contract." The above decision was followed in *Kalu Ram Maigraj v. The Madras Railway Company*,⁽¹⁾ in which the plaintiff claimed compensation for the value of goods consigned by him in September, 1877, and which he alleged were, owing to the Company's negligence and want of proper care, damaged by rain and were afterwards destroyed by order of a Magistrate. As this suit was not founded upon a contract, the court held that this Article applied. It was further held that when two Railway Companies interchange traffic, goods, and passengers with through tickets, rates and invoices, payment being made at either end and profits shared by mileage, the receiving Company, by granting a receipt-note for goods to be carried over and delivered at a station of the delivering Company's line, does not thereby contract with the consignor of the goods as the agent of the delivering Company. In *Dan Mull v. British India Steam Navigation Company*,⁽²⁾ plaintiff claimed damages for the defendant's failure to deliver to him at Rangoon, a bale of piece goods shipped under a bill of lading, dated 3rd December, 1881. The defendant Company denied the receipt of the bale

(1) I. L. R., 3 Mad., 240. (2) I. L. R., 12 Calc., 477.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IV. One year.	

and endeavoured to prove that what was shipped was a bale of gunnies, and pleaded that the suit was barred by this Article. It was held, that in this case it was not open to the defendants, after having denied receipt of the goods, to set up, or for the court, after finding that the goods had been shipped, but not delivered, to assume without evidence, that the goods were lost in order to bring the case within Article 30, schedule 2, of the Limitation Act of 1877. Garth, C. J., was of opinion that where a plaintiff sues for breach of contract and proves his case, the three years' limitation would be applicable, although the defendants were to prove that the breach occurred in consequence of some wrongful act of theirs, to which the shorter limitation would apply.

Limitation of three years would apply where plaintiff sues for breach of contract, though defendants proved the breach occurred in consequence of wrongful act of theirs.

32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years ...	When the perversion first becomes known to the person injured thereby.
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(a) (No. 38, Act IX.) In *Kedarnath Nag v. Khetturpaul Sritirutno*,⁽¹⁾ the defendant took certain land from the plaintiff under a registered lease, which contained a clause prohibiting the defendant from digging a tank on the land without the plaintiff's permission. The defendant having, nevertheless, constructed a tank without such permission, the plaintiff brought a suit to compel him to fill up the tank, or, in case he should fail to do so, for compensation. It was held that the period of limitation applicable to such a suit was Article 120 of schedule 2 of the Limitation Act.

This Article does not apply to suit to compel defendant to fill a tank or for compensation.

(b) *Gangadhar v. Zahurriya*,⁽²⁾ was a suit brought by the plaintiffs, who were admittedly Zemindars of the land, against the defendants, who were occupancy-tenants of the

Applies to a suit to restrain tenant from converting arable land into a grove.

(1) I. L. R., 6 Calc., 34. | (2) I. L. R., 8 All., 446.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART V. Two years.		

land, seeking to restrain the defendants from converting arable land into a grove or wood. It was held that Article 32 applied to this case, and that limitation began to run from the date when the perversion first became known to the plaintiff. In *Raj Bahadur v. Birmha Singh*,⁽¹⁾ a landlord's suit to demolish a well constructed by a tenant was held cognizable by a Civil Court. In *Amrit Lal v. Balbir*,⁽²⁾ it was held that a decision of a Revenue Court disallowing an application to eject a tenant, because he has built on his land, does not, under section 13 of the Civil Procedure Code, bar a suit in the Civil Court to have the building demolished.

33.—Under Act No. XII of 1855 (<i>to enable executors, administrators or representatives to sue and be sued for certain wrongs</i>) against an executor, administrator or other representative.	Two years ...	When the wrong complained of is done.
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(No. 39, Act IX.) See Notes under Article, 20.

34.—For the recovery of a wife.	Two years ...	When possession is demanded and refused.
35.—For the restitution of conjugal rights.	Do.	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.

Suits for restitution of conjugal rights may be brought within two years of any demand and refusal, and not

(a) (Nos. 41 and 42, Act IX.) Held, by a Full Bench, that, in a suit between Mahomedans, when a husband claims as against his wife restitution of conjugal rights, and, as against the person detaining her, recovery

(1) I. L. R., 3 All., 85. | (2) I. L. R., 6 All., 68.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART V. Two years.	

of his wife, such suit being instituted more than two years after a demand and refusal (a) of restitution of conjugal rights and (b) of possession of his wife, the relation of husband and wife still subsisting, the suit is not barred, (a) as against the wife under Article 42, schedule 2, Act IX of 1871, (Article 35 of this schedule) by reason of section 23 of that Act; but is barred, (b) against the other defendant under Article 41, (34 of this Act). In the case of the other defendant, however, it is open to the husband to make a demand of possession of his wife, and, if it be not complied with, to institute a fresh suit, and enforce his right, notwithstanding the dismissal of the former suit. *Ghizni v. Mussammat Mehran*. (Punj. Rec. No. 60 of 1879).⁽¹⁾

necessarily from first demand and refusal.

(b) When a third person detains the wife, a suit for recovery of the wife lies against such person and the decree is executed under the provisions of section 259 of the Code of Civil Procedure. A decree in a suit for restitution of conjugal rights is executed under section 260 of the Code.

See sections 259 and 260 of the Civil Procedure Code.

(c) The Indian Divorce Act (IV of 1869) relates to persons professing the Christian religion. It also applies to marriages contracted under Act III of 1872. Unreasonable delay in presenting or prosecuting a petition for dissolution of marriage is, under the Divorce Act, a ground for disallowing the petition.

This Article inapplicable to suits for restitution of conjugal rights under the Indian Divorce Act.

36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.

Two years... When the malfeasance, misfeasance or nonfeasance takes place.

(a) (No. 40, Act IX.) The words *torts* is a term

Explanation of terms malfeasance, misfeas-

(1) Rivas's Limitation Act, p. 102.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART V. Two years.	

ance, nonfeasance.

used to signify such wrongs as are in their nature distinguishable from breaches of contract;—and these torts are often considered as of three kinds, viz, nonfeasance, or the omission of some act which a man is by law bound to do; misfeasance, being the improper performance of some lawful act; or malfeasance, being the commission of some act which is in itself unlawful.⁽¹⁾

Suit for compensation for crops wrongfully removed held to fall under this Article; standing crops are immovable property.

(b) In *Pandah Gazi v. Jennuddi*,⁽²⁾ plaintiff sued in December, 1877, for compensation for crops wrongfully removed by the defendants in December, 1875. The Lower Court rejected the suit as barred by Article 26 of Act IX of 1871. It was held that standing crops are not moveable property and that the suit was governed by this Article and that it was not barred.

But suit for standing crops carried away under an ejectment decree subsequently reversed held to fall not under this Article.

(c) The *Shurnomoyee v. Pattarri Sirkar*,⁽³⁾ the defendant obtained a decree in a suit brought against the plaintiff for arrears of rent and for ejectment, in execution of which he evicted the plaintiff from his holding, and, after getting possession thereof, carried away certain crops which were then standing on the land. The plaintiff appealed from the decree obtained by the defendant, and on appeal it was set aside, on the plaintiff depositing the rent due, and the plaintiff recovered possession of his tenure. It was held that such a suit was a suit “for profits of immovable property belonging to the plaintiff wrongfully received by the defendant” within the meaning of Act IX of 1871, section 109, and not a suit for “compensation for any wrong, malfeasance, nonfeasance or misfeasance independent of contract” within the meaning of Article 40 of the same Act.

Carrying away crops preceded by trespass on land may fall under Article 39.

(d) In *Narasimmacharya v. Ragupathyacharya*,⁽⁴⁾ plaintiff sued on the 9th of February, 1880, for compen-

(1) Stephen's Commentaries, p. 485. (3) I. L. R., 4 Calc., 625.
(2) I. L. R., 4, Calc. 665. (4) I. L. R., 6 Mad., 176.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART V. Two years.	

sation for loss of crops caused by the defendant's taking possession of his well in January, 1877. The District Judge on appeal dismissed the suit on the ground that time began to run against the plaintiff from January, 1877, and that the claim was barred by section 36, 37, 39 or 40 of schedule 2 of the Limitation Act, 1877. It was held that the plaintiff was entitled to sue for compensation for the trespass within three years from the date on which the defendants' possession ceased, and that the defendants were liable for any loss suffered within three years preceding the date of the suit. It has been observed that the seizure of the well is a continuing trespass and that the limitation for suits for compensation in such a case is three years. "Justice Field, however, in an unreported case held, that as such carrying away is preceded by a trespass on immoveable property, it may be treated as matter in aggravation of the trespass and as such governed by Article 39,"⁽¹⁾ Form No. 71, for plaintiffs for trespass on land appended to the Civil Procedure Code is worded as follows: "entered upon certain land of the plaintiff and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same."

(e) On the 26th July, 1878, defendant complained to the Magistrate that plaintiff committed theft of his grain. The Magistrate, of his own motion, attached the grain on the 10th of August, 1878, pending inquiry into the complaint, then proceeded with the inquiry and dismissed the complaint, but continued the attachment pending the decision of the Civil Court to which he referred the parties. Defendant, in 1879, brought a suit against plaintiff to establish his title to the grain, which was finally

To suit for damages for wrongful detention of grain by Magistrate on defendant's complaint, runs from the date of complaint or attachment.

(1) Mitra's Limitation Act, p. 564.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART V. Two years.	

rejected on the 21st June, 1880, and plaintiff recovered his grain on the 30th of September, 1880, but in a damaged condition. Plaintiff, on the 13th November, 1881, sued the defendant for damages for wrongful detention of his grain and its consequent deterioration in quality and value. It was held that the date of the complaint was the date of the wrong, and limitation ran from that date or at the latest from the date of the attachment, and that the plaintiff's suit was therefore barred, whether the period applicable was one year under Article 23 or two years under Article 36 of schedule 2 of Act XV of 1877. *Mudvirapa Kulkarni v. Fakirapa Kenardi.*⁽¹⁾

37.—For compensation for obstructing a way or a water-course.	PART VI. Three years.	The date of the obstruction.
38.—For compensation for diverting a water-course.	Do. ...	The date of the diversion.

(a) (Nos. 31 and 32, Act IX.) These two Articles only provide for obstructing a way or water-course, and no special provision has been made for obstruction of the right to light or air. Article 36 will apply to suits for compensation in such cases.

Where obstruction is continuous, cause of action was held to accrue *de die in diem* under Article 31 of Act IX of 1871.

(b) In *Rajrup Koer v. Abul Hossein*,⁽²⁾ defendants obstructed the flow of water along an artificial water-course which the plaintiff's ancestor constructed on their land, making compensation to them. It was held that such obstructions being continuous acts as to which the cause of action accrued *de die in diem*, Act IX of 1871, schedule 2, Part V, clause 31, fixing two years from the date of the obstruction as the period of limitation for obstructing a water-course, did not preclude a suit complaining of obstructions, though made more than two

(1) I. L. R., 7 Bom., 427. | (2) I. L. R., 6 Calc., 394.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

years preceding the date of the commencement of the suit.

(c) In *Sri Viswambhara v. Sri Saradhi Charana*,⁽¹⁾ it was held, that an obstruction to a right to water would be a continuing injury giving rise to a fresh cause of action as fresh damage results from it. In *Ponnusawmi Tewar v. The Collector of Madura*,⁽²⁾ it was held that the diversion of water was a continuing injury down to the institution of the suit.

Fresh damage resulting from continuing obstruction gives a fresh cause of action.

(d) In *Oodoyessuree v. Huro Kishore Dutt*,⁽³⁾ plaintiff sued for recovery of possession of land and for opening a water-course through it, alleged to have been stopped by the defendant. It was held that the plaintiff's title to the land being established, his suit ought not to be dismissed on a mere inference of his assent to the defendant's acts, and that the suit was for an interest in immoveable property, and therefore subject to the limitation prescribed by clause 12, section 1, Act XIV of 1859.

These two Articles apply only to suits for damages and not for the removal of obstruction by injunction.

(e) "An obstruction to the migration of fish to and fro in plaintiff's jalkar is not an obstruction to a water-course. See *Moharane Surnomoyee v. Degumbary*, 2 Shome 93."⁽⁴⁾

Obstruction to migration of fish is not obstruction to a water-course.

39.—For compensation for trespass upon immoveable property. | Three years. | The date of the trespass.

(a) (No. 43, Act IX.) Every entry upon another's lands (unless by the owner's leave, or in some very particular cases), is an injury or wrong, for satisfaction of which an action will lie to recover such damages as a jury may think proper to assess; and this injury is called trespass *quare clausum fregid*. (Stephen's Commentaries,

What is trespass upon immoveable property?

(1) 3 M. H. C. R., 111.

(3) 4 W. R., 107.

(2) 5 M. H. C. R., 6.

(4) Mitra's Limitation Act, p. 564.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Vol. III, page 523.) A man is answerable not only for his own trespass, but for that of his cattle also : for if by his negligent keeping, they stray upon the land of another (and much more if he permits or drives them on), and they there tread down his neighbour's herbage, or spoil his corn or his trees, this is a trespass for which the owner must answer in damages. (Stephen's Commentaries, Vol. III, page 525.)

Suit for damage from seizure of a well falls under this Article.

(b) In *Narasimma v. Ragupathy*,⁽¹⁾ plaintiff sued on 9th February, 1880, for compensation for loss of crops caused by the defendant's taking possession of his well in January, 1877. The District Judge on appeal dismissed the suit on the ground that time began to run against the plaintiff from January, 1877, and that the claim was barred by Articles 36, 37, 39 or 40. It was held that the seizure of a well was a trespass on immoveable property, that it continued to be a trespass until the possession of the trespasser came to an end, that the limitation for suits for compensation is three years, and that for any damage which accrued within three years before the date of the suit, the defendant would be liable.

Seizure of a well was trespass and continued as such till trespasser's possession came to an end.

40.—For compensation for infringing copyright or any other exclusive privilege.	Three years.	The date of the infringement.
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This Article is a reproduction of Article 11 of Act IX of 1871, with the alteration of the word "damage" into "compensation."

Suit for damages for, or for an account of profits obtained by infringement of exclusive privilege held to fall under Article 11 of Act IX of 1871.

(a) In *Kinmond v. Jackson*,⁽²⁾ plaintiff sued for an injunction to restrain the defendant from infringing an invention of the plaintiff for the rolling of tea leaf, and also for an account of the profits made by the defendant or for damages. On the defendant's objection that the

(1) I. L. R., 6 Mad., 176. | (2) I. L. R., 3 Calc., 17.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

plaintiff was not entitled both to damages and account, the plaintiff elected to have an account of the profits. The question was, for how many years before suit the account is to be taken. The plaintiff contended that his claim was governed by Article 118 of Act IX of 1871, corresponding to 120 of the Act of 1859. Section 16 of the Indian Copyright Act XX of 1847, provided that "all actions, suits, bills, indictments, informations, for any offence against the Act, shall be brought, sued, and commenced within 12 calendar months next after such offence committed." This section was repealed by the Indian Limitation Act IX of 1871 to the extent of the words "actions, suits, and bills," and the limitation prescribed by that section for "actions, suits, and bills" was re-enacted by Article 11. It is observed that the words of Act IX of 1871, ought to be read as meaning generally, every Civil Suit seeking a remedy for infringement. Section 22 of the Patent Act XV of 1859, provides for an action for infringement of any exclusive privilege granted under the Act. The term "an action" used in the section includes every form of suit whether for damages or for an account of profits. This Article embraces any suit or action brought under section 22 of Act XV of 1859, and it would appear that there was no intention of drawing any distinction between a suit framed as one for damages and one for an account, which is only a mode of ascertaining the amount of damages. In this case it was held that the plaintiff was entitled to an account for the profits of one year only from the date of the filing of the plaint.

41.—To restrain waste.

Three years.	When the waste begins.
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Illustrations *M & N* under section 54 of Act I of 1877, give instances of suits to restrain waste by Hindu Widows and undivided co-parceners.

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>42.—For compensation for injury caused by an injunction wrongfully obtained.</p>	<p>PART VI. Three years.</p>	<p>When the injunction ceases.</p>
<p>Suit for damage for injury caused to moveable property while under attachment held to fall under this Article.</p>	<p>(a) (No. 86, Act IX.) Section 497 of the Civil Procedure Code of 1882, provides for the award of compensation to defendant for issue of an <i>ad interim</i> injunction obtained on insufficient grounds and bars any suit for compensation in respect of the issue of such injunction.</p> <p>(b) "Plaintiffs sued to recover damages for injury caused to certain moveable property while under attachment. After defendant had attached the property, plaintiffs, on July 3rd, 1878, obtained an order removing the attachment under section 280 of the Civil Procedure Code. Defendant then brought a suit under section 283 to maintain the attachment; whereupon, on the 26th July, the court issued an injunction maintaining the attachment till the Civil Suit was decided. That suit was decided against defendant on the 13th November, 1878, and on the 25th August, 1879, plaintiff brought the present suit. Held, that Article 42 of this schedule and not Article 29 was the provision applicable to the suit, which was accordingly within limitation. <i>Haji Pir Muhammad v. Thakur Dass</i>, (Punj. Rec., No. 40 of 1881.)"⁽¹⁾</p>	
<p>43.—Under the Indian Succession Act 1865, sec. 320 or 321 or under the Probate and Administration Act, 1881, sec. 139 or 140, to compel a refund by person to whom an executor or administrator has paid a legacy or distributed assets.</p>	<p>Three years.</p>	<p>The date of the payment or distribution.</p>

As amended by Act V of 1881, section 156.

(1) Rivas's Limitation Act XV of 1877, p. 104.

Description of suit.	Period of limitation.	Time from which period begins to run.
44.—By a ward who has attained majority, to set aside a sale by his guardian.	PART VI. Three years.	When the ward attains majority.

This Article is new. Cause of action does not accrue to the minor during his minority, because an alienation of a ward's property by the guardian or manager is not void *ab initio*, but voidable by the ward on attaining majority.

(a) In *Prosonna Nath Roy Chowdry, v. Afzolonnessa Begum*,⁽¹⁾ a Hindu died in 1844, leaving a widow and a minor son. In 1847, the widow granted to the defendant a *Mourasi* Izara of certain property, but it did not appear whether she so acted as guardian or mother of the minor son. The minor son died in 1855 before attaining majority, and under an *Anumathi patro* executed by the deceased father before his death, the plaintiff was adopted in 1858. The widow died in 1861. The plaintiff brought the suit in 1873, to set aside the alienation made by the widow in 1847. It was held that if the alienation was made by the widow as guardian of the minor son, the suit was not barred, it having been brought within three years after the plaintiff attained his majority; and that if it were made by her as a Hindu widow the suit was still not barred, the cause of action not arising until her death when the plaintiff was minor.

Suit filed in 1873 by a son adopted in 1858 after natural son's death while a minor, to cancel alienation made by widowed mother in 1847, held not barred.

(b) In *Ramausar Pandey v. Raghubar Jati*,⁽²⁾ plaintiff sued to set aside a mortgage by conditional sale, of certain immoveable property belonging to him made on his behalf by his mother during his minority in October, 1865, and for possession of the property. The plaintiff attained his majority in November, 1878. It was held that the suit was governed by Article 142 and not by 44 or 91.

Suit for property sold by plaintiff's guardian is not governed by this Article.

(1) I. L. R., 4 Calc., 528.

| (2) I. L. R., 5 All., 490.

Description of suit.	Period of limitation.	Time from which period begins to run.
45.—To contest an award under any of the following Regulations of the Bengal Code :— VII of 1822, IX of 1825, and IX of 1833.	PART VI. Three years..	The date of the final award or order in the case.

(a) (No. 44, Act IX ; sec. 1, cl. 6, Act XIV.) The Regulations referred to in this and the following Article relate to the settlement of lands, &c., and empower the Revenue authorities to take judicial cognizance of certain claims and disputes respecting lands, &c.

(b) Before Act XIV of 1859, Act XIII of 1848 contained special limitation, and it was held in *Pureeag Singh v. Shib Ram Chunder Mundul*,⁽¹⁾ that the limitation did not apply to a suit brought by an auction purchaser to set aside an award made by the survey authorities.

A person whether he is bound or not by award, cannot sue to rectify it or set it aside three years after its date.

(c) In *Mohima Chunder Chuckerbutty v. Raj Coomar Chuckerbutty*,⁽²⁾ Peacock, C. J., observes, "the plaintiff is not entitled to ask to have the thakbust maps rectified in a suit commenced more than three years after the date of the award, whether he is legally bound by the award or not. If the award was a nullity, and the map was rectified by virtue of that award, plaintiff cannot ask us to rectify an award which he says was a nullity. The award was *de facto*, made under Regulation IX of 1825, and a suit to contest an award or a map made under it is barred unless brought within three years." In *Rajah Saheb Perhlad v. Rajendro Kishore Singh*,⁽³⁾ the Privy Council observe: "they are not prepared to say that the thakbust proceeding of the 11th of February, 1848, may not be an award under Regulation IX of 1825 within the meaning of the Act."

(1) 3 W. R., 165. | (2) 10 W. R., 22. | (3) 12 W. R. P. C., 18.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

(d) Where a Collector, acting in exercise of his powers under section 20 of Regulation VII of 1822, has adjudicated upon a claim to proprietary rights of land in a Khana Khali estate, such adjudication is, as between the parties contesting between themselves before the Collector, an award by the Collector within the meaning of Act XIII of 1848, or Act XIV of 1859, section 1, clause 6, (re-enacted in this Article and the corresponding one of Act IX of 1871) and becomes conclusive between such parties, unless within the period of three years prescribed by the above enactments, a suit is instituted in the Civil Courts in order to contest the justice of such award or to recover any property comprised therein. But a declaration by the Collector, *proprio motu* that a farmer is proprietor, and an order, that he be so registered, or an order declining to investigate a claim is not an award, which, unless contested, becomes final. *Lutf Ali v. Khush-wakt Rai* (Punj. Rec. 41 of 1881.)⁽¹⁾

Collector's adjudication under section 20 of Regulation VII of 1822 upon a claim to proprietary rights of land is an award within clause 6, section 1, of Act XIV of 1859 or Article 44 of Act IX of 1871.

But a Collector's declaration *proprio motu* that a farmer is proprietor and he be so registered is not an award.

(e) The finding of a Survey Deputy Collector, that a party has been in possession of a certain land for more than a year, where the fact is not disputed is not a summary award under Regulation VII of 1822. An award supposes a contention between parties, and a decision after proper investigation into the points at issue. The adjudication by Revenue authorities of the boundaries of two districts is not an effectual settlement of the question of jurisdiction which must be tried by the Civil Court itself under section 14 of the Code of Civil Procedure. *Radha Pershad Singh v. Ram Jeewun Singh*.⁽²⁾ In *Hur Lal Roy v. Sooruj Narain Roy*.⁽³⁾ It was held that a co-proprietor of a joint undivided estate is bound by a survey award and compromise to which the other joint pro-

An award supposes contention between parties and decision after investigation into points at issue.

(1) Rivaz's Limitation Act, p. 107. |

(2) 11 W. R., 389.

(3) 3 W. R., 7.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

prietors were parties, where notice of the survey-proceedings was served on the proprietors jointly and not on him individually.

Settlement Officer's disposal on the evidence recorded by his assistant, is not an award under Regulation VII of 1822.

(f) In *Bhaoni v. Maharaj Singh*,⁽¹⁾ a Hindu died in 1860, leaving two widows, a mother and a son, by a woman married by Gandharf form of marriage. When the senior widow who held the registry of a village died in 1871, the Settlement Officer, on the claims of the junior widow, mother and son, held on the evidence recorded by the assistant Settlement Officer that the claimants held joint possession of the right and directed that the name of each be registered for one-third. In 1873, the mother died and her registry was transferred to the son's name. In 1879, the junior widow sued the son for possession for the one-third given him by the Settlement Officer and for the mother's one-third, alleging that he was not the legitimate son of her husband. It was held that the suit was not barred by limitation as the proceeding of the Settlement Officer was not an award under Regulation VII of 1822, and decreed the plaintiff's claim with costs.

This Article is not applicable to a decision of title by the Settlement Officer under Act XIX of 1873.

(g) At the framing of a record of rights, a dispute arose between the appellant and the respondent as to whose name should be recorded in respect of certain land, of which both parties claimed to be in proprietary possession. On the 8th June, 1876, the Settlement Officer ordered that the respondent's name should be entered in respect of such land. The dispute was subsequently reopened, and on the 3rd June, 1879, the then Settlement Officer ordered that the record of rights should be amended and the appellant's name should be recorded in respect of the land. Thereupon the respondent brought the present suit against the appellant for possession of such

(1) I. L. R., 3 All., 738.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

land, asking that the order of 8th June, 1876, might be affirmed, and that of the 3rd June, 1879, cancelled. The suit was instituted on the 28th July, 1879. The Lower Courts gave respondent a decree, holding that the order of 8th June, 1876, not having been set aside by a suit for that purpose within three years, had finally settled the dispute between the parties. Held, by the High Court, that the decision of the Settlement Officer on a question of title such as was raised in this suit, was not final, nor was there any limitation in Act XV of 1877 for a suit to contest orders such as that of the 8th June, 1876, made under Act XIX of 1873. *Ibrahim Ali v. Hadi Ali.*⁽¹⁾

46.—By a party bound by such award to recover any property comprised therein.	Three years..	The date of the final award or order in the case.
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(a) (No. 45, Act IX; sec. 1, clause 6, Act XIV.) In *Pureeag Singh v. Shib Ram Chunder Mundul*,⁽²⁾ it was held that a suit to set aside an award made by the Survey authorities is not barred by Act XIII of 1848, when the plaintiff was no party to that award but is an auction-purchaser at a sale for arrears of Government Revenue subsequent to the award.

Purchaser at Revenue sale not being legal representative of any of the parties to the award is not bound by the award.

(b) In *Mohima Chunder Chuckerbutty v. Raj Coomar Chuckerbutty*,⁽³⁾ it was held that a suit to recover any property comprised in an award must be brought within three years from the date of the award; but a suit by a person in possession to have his title confirmed is not a suit to recover property. Peacock, C. J., observes: "We think that a person who remains in possession for three years and upwards after the making of a revenue award is not barred by clause 6 from maintaining a suit to con-

Suit by person in possession for confirmation of title is not suit for property.

(1) 1 Weekly Notes, 19. | (2) 3 W. R., 165.

(3) 10 W. R., 22.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

firm his title. Such an award could not by virtue of section 22 of the Act be executed by turning him out of possession." The award and the map do not determine the title of the parties, nor are they evidence of title.

Plaintiff dispossessed after the award, suing for possession, has twelve years.

(c) In *Mozuffur Ali v. Grish Chunder Doss*,⁽¹⁾ it was held that where a plaintiff sued not only for the cancellation of a survey award, but also to be restored to possession of land from which he had been subsequently dispossessed, his suit was held not to be barred because not brought within three years of the award, the latter claim being a different cause of action, to be governed by the limitation of 12 years in clause 12, section 1, Act XIV of 1859.

But a suit for possession brought three years after the award without alleging disposssession since, was held barred.

(d) Where a Settlement Officer by a certain proceeding, recognized the plaintiffs' right to the property in suit, and declaring them not to be clearly shown to be out of possession of it, ordered their names to be recorded in the proprietary register, and the plaintiffs subsequently brought a suit for establishment and declaration of right to partition and possession of the property, it was held, that the proceeding of the Settlement Officer was undoubtedly an award under Regulation VII of 1822, and that as the plaintiffs sued for possession and did not allege that they had been dispossessed since the award, thus raising the presumption that they were not in possession at the time, and as their suit was in substance and effect, a suit to recover property comprised in an award, it was barred by limitation not having been instituted within three years. *Guneshee Lall v. Mussumat Tekum Kooer*.⁽²⁾

Limitation does not begin to run as long as plaintiff's claim is recognized by temporary settlement.

(e) In *Kristo Chunder Sundyal v. Kashee Kishore Roy Chowdhry*,⁽³⁾ Markby, J., observes: "Moreover, I

(1) 10 W. R., 71. | (2) 5 N.-W. P. H. C. R., 78.

(3) 17 W. R., 145.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

think, there is authority, which we ought not now to dispute, for holding that this right is not barred by lapse of time so long as it is formally and distinctly recognized by the Revenue authorities when making the temporary settlements. No doubt such temporary settlements interfere in some measure with the full enjoyments of the Zemindar's rights, but both here and in the courts of the North-Western Provinces: (See Thomson, *ubi supra*), it has been held that the period of limitation which bars the claim to a settlement does not begin to run so long as the proprietary right of the Zemindar is recognised, and no permanent settlement is made with any other person, and it seems to me sufficient in this case to say that we ought to follow the rule which has been so long acted on." The payment of malikana is not the only method in which a proprietary right can be recognized. But the keeping of the malikana in deposit, as in this case, for the benefit of the recorded proprietors generally, is a sufficient recognition of a sharer's proprietary right.

Mode of recognising the right of the malik.

(f) Zemindari rights are not extinguished, but are only in abeyance during periods of temporary settlement; and possession under a permanent settlement is adverse from the date on which the permanent settlement is made. Where malikana is in deposit with the Collector on behalf of proprietors who have refused settlement, the proprietors lose their right to recover it if they do not claim it for more than twelve years. *Kristo Chunder Sandel Chowdhry v. Shama Soonduree Debia Chowdhraim*,⁽¹⁾.

Possession becomes adverse from the date of permanent settlement.

Proprietor failing to claim for 12 years malikana in deposit, loses right.

(g) Clause 6, section 1, Act XIV of 1859, provides that possessory titles by virtue of awards under the

Settlement of the estate will not give the person obtaining the settlement

(1) 22 W. R., 520.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

the right lost by limitation.

Regulations there mentioned, shall become final unless questioned within three years. But that will not enable a person to come in within three years after the date of such award and recover possession of lands in respect of which his suit has been barred by the other provisions of the law of limitation. *Beer Chunder Joobraj v. Ram Guttu Dutt.*⁽¹⁾ Parties claiming as heirs of property sold without their consent, held by the purchaser in adverse possession, are bound to appear and press their title within the period prescribed by law: the mere fact that by some proceedings of the Settlement Officers they obtained a settlement of the estate, cannot give them a right which they have lost by limitation. *Moula Buksh Khan v. Koshoram Pandey.*⁽²⁾

Collector taking possession for party whose claim he recognised will be adverse to plaintiff whose claim he disallowed.

(h) But that, in any event, inasmuch as in the year 1886, the Collector refused to recognise *B's* right to the malikana and adverse possession, so far as possession could be taken of such an interest in immoveable property, was then taken by *A*, or in other words, by *E*, because it must be taken that the Collector since that date had been holding for *A*, whose right he had then recognised, after refusing to recognise the right claimed by *B*, the present suit having been instituted in 1880, was equally barred whichever of the above Articles was held to apply. *Gopi Nath Chobey v. Bhugwat Pershad.*⁽³⁾

Adult co-sharer's possession after temporary settlement in his name during minority of the other co-sharer, is not adverse to the latter.

(i) Where one co-sharer managed the property, and in the absence or during the minority of the other co-sharer, obtained from the Collector a temporary settlement in his own name of *chur* lands, accreting to the parent estate, it was held that the latter was entitled to participate in the temporary settlement, and that the possession of the

(1) 8 W. R., 209.

(2) 10 W. R., 249.

(3) I. L. R., 10 Cal., 697.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

former under that settlement was not adverse to the latter. *Bissessuree Dossee v. Kalee Koomar Roy.*⁽¹⁾

(j) Where an award by a Survey Deputy Collector, confirmed by the Superintendent of Survey, is appealed successively to the Commissioner and the Board of Revenue, both of whom declined to go into the merits of the case, a suit to contest the justice of the award and obtain a declaration of title may be brought within three years, (clause 6, section 1, Act XIV of 1859), from the date, not of the Deputy Collector's award, but of the order of the Board of Revenue. The fact that the Board summarily dismissed the appeal without entering into the merits of the case, does not make it the less a final order. *Kishen Chunder Dass v. Mahomed Afzul.*⁽²⁾

Limitation runs from the date of the final order in appeal though it was dismissed without investigation into the merits.

(k) Where a survey award relates to lands belonging to parties whose rights and interests are distinct and separate, and one of the parties appeals against the award, limitation runs against the other party, not from the date of such appeal, but from the date of the survey award. *Toolsee Ram Dass v. Mahomed Afzul.*⁽³⁾

Where one of two parties whose interests are distinct appeals, limitation runs against the other from the date of the award.

47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, Chapter XL, or the Bombay Mám-latdárs' Courts Act, or by any one claiming under such person, to recover the property comprised in such order.	Three years..	The date of the final order in the case.
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(1) 18 W. R., 198.

(2) 10 W. R., 51.

(3) 10 W. R., 48.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

(a) (No. 46, Act IX ; section 1, clause 7, Act XIV.) Section 3 of Act X of 1882, expressly enacts that references in former Acts to the old Code shall be read as applying to the corresponding parts of the new Code and consequently orders passed under chapter 12 of the Criminal Procedure Code of 1882 are governed by this Article.

Magistrate's finding as to possession under section 530 of Act X of 1872 is conclusive.

(b) In *Lillu Bin Baghushet v. Annaji Parashram*,⁽¹⁾ it was held, a Mamlatdar's finding as to the point of actual possession is not conclusive in any subsequent suit, as the Bombay Act V of 1864 contains express provision to that effect. But a Magistrate's finding is conclusive as to possession under section 530 of Act X of 1872. Possession actually taken by a person having a right to it, is not the less effective, as perfecting his title by reason of an irregularity in taking it. Subsequent ouster will give rise to a new cause of action. West, J., observes, "the general principle is that, a man who acquires possession is remitted, as it is said,—that is, he may rely for the support of his possession on any still subsisting title vested in him, and for which a legal remedy is still open to him (Coke Lit., 349-a.) *Brassington v. Llewellyn*, (27 L. J. Ex. 297.) Of two persons entering simultaneously, the English Law assigns possession to him that has the right, by a rule identical in substance with that of the Hindu Law on the same subject, (Perkin's Prof. Bk. 213, Narada 1 ; 4 ; 12, 13.) Consistently with this, a person having a right to possession may enter peaceably, and may then maintain the possession thus acquired. *Taylor v. Cole*, (1 S. L. C., 6th ed., 115, so also *Brinsmead v. Harrison*, L. R. 7, C. P., 547. *Ex-parte Drake*, L. R., W. N. for 1877, p. 119.) This, as Lord Kenyon said, 'will not break in upon any rule of law respecting the mode of

(1) I. L. R., 5 Bom., 387.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

obtaining the possession of lands.' (See 3 T. R., at p. 295.) If there is a breach of the peace in attempting to take possession, that affords a ground for a criminal prosecution, and, if the attempt is successful, for a summary suit also for a restoration to possession under section 9 of the Specific Relief Act I of 1877—*Dadabhai Narsidas v. The Sub-Collector of Broach*, (7 Bom., H. C. Rep. 82, A. C. J. ;) but an unlawful act in entering, does not make the owner a trespasser *ab initio*, (1 Hilliard on Torts, p. 600. See 1 and 2 Vic., C. 74, section 6. That a landlord entering by force is answerable for an injury to the tenant's property. See *Beddall v. Maitland*, L. R., W. N. for 1881, p. 43 ;) the law will still annex the right to the possession."

(c) Certain *chur* lands which had been submerged having reformed, were claimed by a number of parties. In a proceeding under section 318 of Act XXV of 1861, the Magistrate, in January, 1871, directed possession to be given to certain persons known as the Roys. In 1872, the present defendants instituted a suit against the Roys to set aside the order of the Magistrate, and on the 16th December, 1873, obtained a decree in the High Court, under which possession was given on the 10th July, 1874. In 1874, more than three years after the Magistrate's order, the plaintiffs instituted two suits against the Roys, and the defendants, for possession of the lands, made over to the latter under the decree of 1873. It was held that these suits were not barred by limitation under Article 46, schedule 2 of the Limitation Act IX of 1871. That Article can only apply between the parties whose possession has been confirmed by the Magistrate, and each one of the parties to that proceeding who claimed against them. It does not apply in favour of one of the parties who has subsequently succeeded by regular suit in

This article can only apply between parties whose possession has been confirmed by the Magistrate. It does not apply in favour of one of the parties who subsequently sues by suit the person whose possession was so confirmed.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Verbal order is not one falling within this Article.

B. H. held that Mamlatdar's order under Bombay Act V of 1864, does not affect a partition suit.

Magistrate's order attaching and placing in charge of a Sub-Magistrate property until Civil Court determines right, does not fall under this Article.

ousting the parties put in possession by the Magistrate. *Aukhil Chunder Chowdhry v. Mirza Delewar Hossein.*⁽¹⁾

(d) A verbal order alleged to have been passed by the Magistrate is not an order within the meaning of this clause; (*Mahomed v. Gunga*, 2 Agra, 26.)⁽²⁾

(e) In *Bhaguji v. Aniaba and others*,⁽³⁾ plaintiff sued, in 1876, to establish his right to and recover a fourth share of certain property alleged to be ancestral. He stated his cause of action to have accrued on the 17th May, 1871, on which day he had been dispossessed by an order by the Mamlatdar, made under Bombay Act V of 1864. The District Judge held, that the suit was barred by Article 46 of Act IX 1871, schedule 2. It was held that the Mamlatdar's order does not interfere with a partition suit such as this, which is not a suit to recover property within the meaning of this Article. This decision was followed in *Shivaram v. Narayan and others*.⁽⁴⁾ A Mamlatdar's order is not conclusive evidence of possession and dispossession; *Basapa v. Lakshmapa*.⁽⁵⁾

(f) Chapter XXI of Act XXV of 1861 corresponds to Chapter XII of Act X of 1882.

In *Akilandammal v. Periasami Pillai*,⁽⁶⁾ the plaintiff's deceased husband and the defendant were sons of brothers. The former died in 1871, and a dispute arose between the plaintiff and defendant as to the property in question. The Joint Magistrate, hearing of this dispute, held an inquiry under the provisions of chapter 22 of Act XXV of 1861, and finding himself unable to decide which party was in actual possession of the property, placed them in charge of the Sub-Magistrate under an order of 27th May, 1871. It was held that this was not an order respecting

(1) 6 Calc. L. R., 93.

(2) *Mitra's Limitation Act*, p. 569.

(3) L. L. R., 5 Bom., 25.

(4) I. L. R., 5 Bom., 27.

(5) I. L. R., 1 Bom., 624.

(6) I. L. R., 1 Mad. 309.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

"the possession of property," but an attachment proceeding recorded, because the Magistrate was unable to determine which party was in possession. In *Durga v. Mangal*,⁽¹⁾ a Magistrate, in the matter of a dispute as to a bathing place, bound the parties to recognizance and directed the Tahsildar to warn them not to go near it till Civil Court had settled the quarrel. It was held that the order to the Tahsildar was not an attachment contemplated by the Criminal Procedure Code.

Warning a party not to go near a bathing place, is not attachment under C. P. C.

(g) In *Kangali Churn Sha v. Zomur Rudonissa Khatoon*⁽²⁾ the plaintiff, as purchaser in auction held in 1871, sued for possession on the 1st March, 1879. In 1875, the defendant, who claimed possession, was directed by the Magistrate on the 30th June, 1875, to be retained in possession, and the plaintiff's petition to the Sessions Judge to have the matter referred for the orders of the High Court was rejected on the 5th April, 1876. It was held that the suit must be brought within 3 years from the date of the Magistrate's order and not from the date of the order of the Sessions Court. It was further held that this Article refers to immoveable as well as moveable property.

Limitation runs from the date of the Magistrate's order and not from that of Sessions Court refusing to refer the matter to the High Court.

This Article refers to immoveable as well as to moveable property.

48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Three years.	When the person having the right to the possession, of the property first learns in whose possession it is.
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(a) (Nos. 47 and 48, of Act IX; sec. 1, cl. 2, Act XIV.) In *Pandah Gazi v. Gennuddi*,⁽³⁾ it was held, that standing crops are not moveable property, but immoveable property within the meaning of the Limitation Act.

Standing crops are immoveable property, but when cut, they may be treated as moveable. (July 1878.)

(1) 7 N.-W. P. H. C. R., 35. | (2) I. L. R., 6 Cal., 709.

(3) I. L. R., 4 Calc., 665.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Suits for money entrusted to the defendant and misappropriated by him, fall under this Article.

(b) In *Rameshar Chaubey v. Matabhikh*,⁽¹⁾ plaintiff sued the defendant for a certain sum of money, on the ground that he had given it to him to deliver to his family, and that the defendant had not done so, and that when the fact became known to him and he demanded the money, the defendant denied having received it. It was held that the suit was governed by this Article, and that the time from which the limitation began to run was when plaintiff first learned that defendant had retained the money.

Suit for proceeds in the defendant's hands as agent of his deceased principal, against whom a decree had been made for conversion of goods, falls neither under this Article nor Article 60; but under Article 118.

(c) The defendant, as an agent, sold goods entrusted to him by his principal, who died after a decree had been obtained against him for their conversion; and, as agent for the representative of the deceased, retained the proceeds which the decree-holder had an equitable right to follow in the agent's hands. It was held that neither Article 48 of schedule 2 of Act IX of 1871, fixing the limitation of three years to suits for moveable property acquired by dishonest misappropriation or conversion, nor Article 60 of the same schedule, fixing the limitation of three years to suits for money payable by the defendant to the plaintiff and to suits for money received to the plaintiff's use were applicable to this suit; but that, as a suit for which no period of limitation was provided elsewhere, it fell within Article 118 of the same schedule, fixing for such suits the limitation of six years. *Gurudas Pyne v. Ram Narain Sahu*.⁽²⁾

49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Three years..	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
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(1) I. L. R., 5 All., 341.

(2) I. L. R., 10 Calc., 860.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

(a) In *Mudvirapa Kulkarni v. Fakirapa Kenardi*,⁽¹⁾ West, J., observes, that this Article is intended to apply to cases of detinue. Articles 123, 126 and 127, allowing a period of 12 years, apply to certain suits in respect of moveable or immoveable property. Article 133 prescribes a period of 12 years for suits for the recovery of moveable property sold by a trustee, depository or pawnee. Article 145 allows a period of thirty years for the recovery of moveable property from the depository or pawnee himself.

This Article is intended to apply to cases of detinue.

Articles 123, 126, 127, 133 and 145.

(b) A testator bequeathed certain specific moveable property to *A*. *B* applied for and obtained a certificate under Act XXVII of 1860, on behalf of the testator's widow and took possession of the property bequeathed. *A* appealed, and the case was remanded for re-trial. On the 27th of March, 1873, the District Judge cancelled the former order and granted a certificate to *A*, and on the 19th August, 1873, *B* was directed to deliver up the property to *A*, or his vendee *C*, who had purchased it from *A*. On the 22nd of March, 1878, *C* instituted a suit to recover the property. It was held that the suit was barred under this Article. *Issur Chunder Doss v. Juggut Chunder Shaha*.⁽²⁾

Suit for specific moveable property bequeathed to the plaintiff's vendor to whom District Judge had ordered its surrender by defendant who had obtained a certificate, falls under this Article.

(c) In *Dhondiba Krishnaji Patel v. Ramchandra Bhagvat*,⁽³⁾ *A* entered into an agreement with *B* for the purchase of moveable and immoveable property and made a deposit. *B*, however, conveyed the property in question to *C* and put him in possession. *A* brought a suit for specific performance against *B* and *C* and obtained a decree and a conveyance executed by the court upon *B* declining to obey the decrees. The physical possession of the properties not having passed to *A*, he brought

Suit for moveables included in a decree for specific performance of an agreement to sell them and some real property is within time if brought within three years from decree.

(1) I. L. R., 7 Bom., 427. | (2) I. L. R., 9 Cal., 79.

(3) I. L. R., 5 Bom., 554.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

this suit within three years from the date of the said decree to recover from *C* the properties in question. For the defendant, it was contended that the starting point of limitation, being the original cause of action, namely, the breach of contract, the suit as to moveable property is barred, though that as to immoveable property is not, being within 12 years from the date of the breach of contract. It was held that according to section 85 of the Indian Contract Act the ownership in moveable property not passing before that in immoveable property passes, and as the right to possession of the immoveable property accrued at the earliest on the date of the final decree for specific performance, the starting point of limitation under Article 49, schedule 2, of Act XV of 1877, was the date of the said decree.

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| 50.—For the hire of animals, vehicles, boats or household furniture. | Three years.. | When the hire becomes payable. |
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(No. 49, Act IX; sec. 1, cl. 8, Act XIV.) This Article refers to the hire of certain things for use while Article 56 refers to the price of work done by plaintiff.

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| 51.—For the balance of money advanced in payment of goods to be delivered. | Three years.. | When the goods ought to be delivered. |
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Balance.

(a) (No. 50, Act IX.) Balance is that which expresses the difference between the debtor and creditor sides of an account; also used commercially to express the difference between the value of the exports from and imports into a country.—*Wharton*.

“Money” includes any currency usually employed in selling and buying as the equivalent of money.

(b) Money means, (1) coin; stamped metal; pieces of metal, usually gold, silver, or copper stamped by public authority, and used as the medium of commerce. (2) Hence, any currency usually and lawfully employed in buying and selling as the equivalent of money, as bank-notes and

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

the like.—*Webster*. “Money” is the name given to the commodity adopted to serve as the *merchandise bennale*, or universal equivalent of all other commodities, and for which individuals readily exchange their surplus products or services.—*Brande*. Even provincial notes if received as money, are money, but stocks are not money. (*Rosco’s Digest*, 543.)

(c) On reference by the Board of Revenue, N.-W. P.,⁽¹⁾ Stuart, C. J., observes: “There was a good deal of discussion at the hearing as to what “money” legally meant, that is, what is included in the word, and it seemed to be thought that in law, money only meant coin in gold, silver, or copper. That, however, is not the legal meaning of the term; it means and includes not only coin, but also bank-notes, Government promissory notes, bank deposits, and otherwise and generally any paper obligation or security that is immediately and certainly convertible into cash, so that nothing can interfere with or prevent such conversion.” These observations were made with reference to the word, “Money” used in clause b, Article 12, schedule 2 of The Indian Stamp Act I of 1879.

Money also includes any paper, obligation or security certainly convertible into cash.

(d) *Boiddonath Shah v. Lalunnissa Bibee*,⁽²⁾ was a suit for balance of account consisting of monies advanced in payment for goods to be subsequently supplied, and it was governed by limitation prescribed by clause 9, section 1, Act XIV of 1859. The cause of action accrued at the time that the goods ought to have been delivered. Peacock, C. J., observes: “If there was no usage and no time fixed, then we think that the time for the delivery of the goods would be a reasonable time after the advance of the money, having reference to all the circumstances.”

Time for “delivery,” if there was no fixed time or usage, would be a reasonable time after the advance.

(1) I. L. R., 3 All., 793. | (2) 7 W. R., 164.

Description of suit.	Period of limitation.	Time from which period begins to run.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	PART VI. Three years..	The date of the delivery of the goods.

As to goods supplied from time to time on credit, no fixed period of credit being agreed upon, limitation runs from the date that each item was supplied.
(May 1899.)

(a) (No. 51, Act IX.) In *Satcowree Singh v. Kristo Bangal*,⁽¹⁾ it was held, that where a tradesman supplies goods from time to time on credit to a customer who makes payments from time to time on account, no fixed period of credit being agreed upon, the cause of action for purposes of limitation must be taken to arise on the date when each item claimed was supplied, and that where the parties intend that all goods delivered within a fixed period are not to be paid for until the end of such period of credit, limitation runs not from the time of the purchase or delivery, but from the expiration of credit. As to what constitutes delivery, see sections 90 to 92 of the Contract Act

53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years.	When the period of credit expires.
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Suit for value of wood claimable under contract after its completion falls under this Article.

(a) (No. 52, Act IX.) See *Notes* to Article 52. In *Pragi Lal v. Maxwell*,⁽²⁾ plaintiff brought the suit on the 10th of October, 1882, to recover the balance due to him from the defendants for firewood supplied by the former, the bill for the said balance having been presented by the plaintiff to the defendants on the 11th of November, 1879. The defendants pleaded the bar against a portion of the claim of the plaintiff on the ground that the value of firewood became due on the several dates on which the firewood was supplied and that therefore Article 52 applied. It was held that the plaintiff's claim was not barred as Article 53 and not 52 applied inasmuch as the contract specified that the price of wood was claimable after the completion of the contract.

(1) 11 W. R., 529. | (2) I. L. R., 7 All., 284.

Description of suit.	Period of limitation.	Time from which period begins to run.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	PART VI. Three years.	When the period of the proposed bill elapses.

(a) (No. 53, Act IX.) "When the contract was for six months' credit, the payment then to be made by a bill at two or three months, at the purchasers option, it was held that an action for the price would not lie at the expiration of six months, and that the time began to run from the expiration of the eight or nine months; it was unnecessary to decide which. It was intimated that the only action which would lie till then was an action for breach of contract in giving the bill. (*Helps v. Winterbottom*, 10 B. & C. 431.)⁽¹⁾

In an action for price payable at two or three months at purchasers' option when contract was for six months' credit, time runs from eighth or ninth month.

55. the price of trees growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years.	The date of the sale.
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(No. 54, Act IX.)

56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years.	When the work is done.
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(a) (No. 55, Act IX.) "A suit for the price of work done by an Attorney or Vakeel is specially provided for. (See Article 84, and W. R. Gap No. 18.) Where a duty requires continuation of services, the completion of the duty is the cause of action. (*Angell*, 148.) The work must have been done at the request of the defendant."⁽²⁾

Completion of duty is cause of action.

(1) *Darby and Bosanquet*, p. 19. | (2) *Mitra's Limitation Act*, p. 572.

Description of suit.	Period of limitation.	Time from which period begins to run.
57.—For money payable for money lent.	PART VI. Three years.	When the loan is made.

Articles 57 and 59 apply only to suits for a loan repayable at once or on demand. Suit for money lent on debtor's verbal agreement to repay at the end of a year, falls under Article 115.

(a) (No. 56, Act IX; section 1, clause 9, Act XIV.)

In *Rameshwar Mandal v. Ram Chand Roy*,⁽¹⁾ plaintiff sued for a loan which the defendant was said to have agreed verbally to repay at the end of a year with interest. The Small Cause Judge was of opinion that it was not the intention of the Legislature in cases of money lent unsecured by any instrument, that any specified date for payment would save limitation, and that limitation therefore should run from the date of the loan. Garth, C. J., being of opinion that Articles 57 and 59 would apply only to suits for a loan repayable at once or on demand, held, that the suit was governed by Article 115, which virtually provides for the case of all contracts which are not in writing, registered, and not otherwise specifically provided for. With reference to the contract in the case, Garth, C. J., observes "this being the contract, it is clear that the plaintiffs would have no right of suit until the expiration of the year; and therefore it would seem obviously unjust and contrary to the meaning of the Limitation Act, that limitation should run, not from the time when the plaintiff's right of action accrued, but from the time when the advance was made, which was the consideration for the defendants' promise. Suppose that by a contract of this nature, instead of the money being repayable at the end of one year, it were repayable at the end of four years. It is clear, that if the Munsiff were right in his construction of Article 57, the plaintiff, however honest and *bona fide* his bargain may have been, would never have a right to enforce it, because by the time when his right to sue accrued it would be barred by limitation. In England, by the Statute of

Frauds, a contract which is not to be performed within

Observations of Garth, C. J., as to verbal agreement of loan.

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(1) I. L. R., 10 Calc., 1033.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

three years from the making thereof, must necessarily be in writing. But here, we have no Statute of Frauds; and in commercial affairs, people are at liberty to make any verbal contracts they please. And it seems to me that it could never have been the intention of the Legislature to prohibit verbal contracts by means of an Act which was passed for a totally different purpose, and which merely professes to regulate the time within which different suits are to be brought." This Article was held not to apply to a verbal contract by which a debtor promised to pay the whole sum due on default of three successive instalments: *Kylash Chunderdass v. Roy-konto*.⁽¹⁾ (*Vide Note A* under Article 75.)

within 3 years to be in writing. In India, people are at liberty to make any verbal contract which the Legislature could not have intended to prohibit.

58.—Like suit when the lender has given a cheque for the money.	Three years.	When the cheque is paid.
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(2) (No. 57, Act IX.) A cheque is a bill of exchange generally drawn on a banker and payable on demand. If a loan is made by means of a cheque given by the lender, cause of action does not arise against the debtor till the cheque is cashed, even if the debtor makes use of the cheque and receives credit for it from his own banker before the cheque is actually paid. (*Garden v. Bruce*, L. R. 3, C. P. 300; *Banning* 25.)

In case of loan made by a cheque, cause of action does not arise till the cheque is cashed.

59.—For money lent under an agreement that it shall be payable on demand.	Three years.	When the loan is made.
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(2) (No. 58, Act IX.) The corresponding Article of Act IX of 1871, provided that limitation should run when the demand was made. Before the passing of the Act of 1871, the law of the country was that, in a suit for money lent upon an agreement that it shall be repayable on demand, the Statute should run from the date of the loan. See *Eathamu Kala Subbammah v. Ragiah*,⁽²⁾ *Hempammal v. Hanuman*.⁽³⁾

(1) L. L. R., 3 Calc., 619 | (2) 7 M. H. C. R., 293.

(3) 2 M. H. C. R., 473.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

English Law on the debt payable on demand.

(b) If a bill or note be made payable on demand, the Statute runs from the date of making or accepting, because the bill or note is payable immediately, and no demand is necessary. *Christie v. Fonsick* (1 Sel. N. P., 399), and *Rumball v. Ball* (10 Mod., 38). And the same rule applies to any promise to pay on demand. *Collins v. Banning* (12 Mod., 444). Nor will it make any difference in this respect that the debt is to be repaid with simple, or even with compound interest. *Norton v. Ellam* (2 M. and W., 461) and *Jackson v. Ogg* (1 Johns, 397).⁽¹⁾

Suit on a promissory note payable at any time within six years upon demand, does not fall under this Article or Article 73. (September 1882.)

(c) In *Sanjivi v. Errapa*,⁽²⁾ it was held that a suit brought in March, 1881, upon a promissory note dated the 12th of September, 1875, payable at any time within six years upon demand, was not barred by limitation, being governed not by Article 73, but by Article 120 of schedule 2 of The Indian Limitation Act of 1877.

Where a promise is made in consideration of some collateral thing being done on demand, demand must be made before promise can be enforced.

(d) In *Ram Chuander Ghossaul v. Juggut Monmohiney Dabee*,⁽³⁾ Garth, C. J., observes: "where a man promises to pay a sum of money, &c., on demand, which it is his duty to pay, whether a demand be made or no, then the money becomes payable at once, and no demand is necessary before suing him for it; as for instance in the case of money lent and money due for goods sold or for work done. But where a promise is made in consideration of some collateral thing being done on demand, there the demand must be made before the promise can be enforced, as in the case of a promise to pay Rs. 100 to B, if A should go to Dacca, on demand, or, if A should pay Rs. 100 to C upon demand." "My difficulty is saying that a demand was unnecessary and that the plaintiff had a right without any demand to enforce his remedies upon the mortgage is this—that there is a

(1) *Darby and Bosanquet*, p. 20. | (2) 1 I. L. R., 6 Mad., 290.

(3) 1 I. L. R., 4 Calc., 294.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

special provision that, on demand of the debt due, he may take possession of the mortgaged property, which means, I conceive, that he cannot take possession until demand.

(e) Two brothers, *V* and *R*, in 1861, agreed together that part of their house should be divided and part enjoyed in common. Each brother was to occupy an assigned division and have the use in common of the rest. If either wished to leave the house, he was bound to offer his share to the other at a fixed price; or if he wished to purchase the share of the other, and the other refused to sell, then the party refusing to sell at a fixed price was bound to buy the share of the other brother who wished to purchase. *V* called upon *R*, in 1877, either to pay Rs. 418 or give up the house. It was held, that this was an agreement enforceable by law; that until demand no cause of action arose, and limitation only began to run from the demand, and that specific performance should be granted in the alternative. *Virasami Mudali v. Ramasami Mudali*.⁽¹⁾

Case where demand was held a condition precedent to enforce an agreement.

(f) In May, 1857, *J. R.* gave to *R. R.* a promissory note for payment of £150, three months after demand, no interest being reserved. *J. R.* died in 1869, and *R. R.*, in 1878. The note was in *R. R.*'s possession at his death, and he had endorsed upon it receipts in November, 1857, and August, 1858, each for half a year's interest. It appeared that no other interest had ever been paid. *J. R.*'s estate being administered by the Court, *R. R.*'s executor claimed to prove on the promissory note. Hall, V. C., was of opinion that the claim must be allowed for £150 with interest from May, 1858. It was held on appeal, that the admissions by the payee of the payment of interest were evidence of a demand having been made in 1857, so as to

English case. Where money is repayable three months after demand, a demand is necessary and admission by payee of payment of interest is evidence of demand.

(1) I. L. R., 3 Mad., 87.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

make the £150 immediately payable, and that the Statute of Limitations was a bar to the claim. *Brown v. Rutherford*.⁽¹⁾

Though action against principal was barred, surety was held liable under section 72 of the Deccan Agriculturists' Relief Act.

(g) *Hajarimal v. Krishnarav*,⁽²⁾ was a suit instituted on the 11th September, 1880, against a non-agriculturist, principal and agriculturist surety for money due on a bond dated the 5th August, 1877, and payable on demand. The action being barred against the principal debtor under the Limitation Act XV of 1877, schedule 2, Article 59, the question was referred to the High Court, whether, under section 72* of the Deccan Agriculturists' Relief Act XVII of 1879, the agriculturist surety was still liable for the amount sued for. It was held, that although the suit was barred as against the principal debtor under this Article, yet the surety, being an agriculturist, was still liable, inasmuch as section 72 of the Deccan Agriculturists' Relief Act, which extends the period of limitation in the case of suits against agriculturists, applies to all agriculturists, whether principals or sureties in the districts affected by that Act.

60.—For money deposited under an agreement that it shall be payable on demand.	Three years.	When the demand is made.
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(a) This Article is new, and a distinction is now for the first time drawn between money lent and money deposited under an agreement that it shall be payable on demand

When money deposited is withdrawable at the deposi-

(b) In *Hingun Lall v. Debee Pershad*,⁽³⁾ it was held

- (1) 14 L. R., Ch. D., 687. | (2) I. L. R., 5 Bom., 647.
(3) 24 W. R., 42.

* Section 72 of the Deccan Agriculturists' Act was once amended by Act XXIII of 1881 and further amendment has been proposed by Bill No. XVIII of 1886, now before the Legislative Council.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VI.
Three years.

that where money deposited in a bank is withdrawable at the depositor's will and pleasure, and the deposit carries compound interest with it, a debt becomes due at the end of each year without demand, and the depositor's claim is limited to three years from the date of deposit.

tor's pleasure, the depositor's claim is limited to three years from date of deposit.

(c) In *Ram Sukh Bhunji v. Brohmoji Dasi*,⁽¹⁾ it has been held that the word "deposit" in this Act, as distinguished from a loan, refers to cases where money is lodged with another under an express trust, or under circumstances from which a trust can be implied.

The word "deposit" refers to cases where money is lodged with another under an express trust.

(d) In *Foley v. Hill*,⁽²⁾ it is decided that a banker and his customer do not stand in the relation of trustee and *cestui que trust*, but only of debtor and creditor by simple contract, and an agreement to pay interest makes no difference in this respect. In *Nasir Bin Abdul v. Dayabhai Itcha Chand*,⁽³⁾ A, deposited certain monies with B, a banker, and drew against them, but not to the full extent: the residue was employed on A's account by B, according to an agreement between them. It was held that besides the ordinary relation of banker and customer, there subsisted also between them that of principal and agent, and that, therefore, the right of action arose at the time of demand. It was further held that three years' limitation applied under Act XIV of 1859, section 1, clause 9. With regard to deposits, see also *Parbati Charan Mookerjee v. Ramnarayan Matilal*,⁽⁴⁾ *Tarini Prasad Ghose v. Ram Krishna Banerjee*,⁽⁵⁾ and *Brammamayi Dasi v. Abhai Charan Chowdhry*.⁽⁶⁾

The relation between a banker and his customer is only of debtor and creditor by simple contract.

In addition to the ordinary relation of banker and customer, relation of principal and agent may subsist.

(e) The respondents kept a floating account with the appellant, receiving interest on the monies in deposit with the appellant at the rate of ten annas per cent., such

Suit for money deposited and for interest, was held to be within time as the account was a running one and interest was credited yearly.

(1) 6 C. L. R., 470.

(2) 2 H. L., Calc., 28.

(3) 10 B. H. C. R., 300.

(4) 5 B. L. R., 396.

(5) 6 B. L. R., 160.

(6) 7 B. L. R., 489.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VI.
Three years.

interest being credited to them yearly. On the 25th November, 1878, the account was stated, and a balance of Rs. 584-11-0 was found to the credit of the respondents. On the following day, the 26th November, the appellant paid the respondents Rs. 60 on account of interest. On the 12th April, 1880, the respondents brought the present suit against the appellant, claiming Rs. 584-11-0, and Rs. 55-5-0 interest on that sum. It was held that whether Article 59 or 60 of this schedule applied, the suit was within time, as the account was a running one, and interest was credited yearly. *Kabari Puri v. Ratan Chand.*⁽¹⁾

Money deposited in a sealed bag.

(f) The case of money deposited in a sealed bag, or which may otherwise be ear-marked and recovered in specie, is different. (*Banning* 15).

61.—For money payable to the plaintiff for money paid for the defendant. | Three years. | When the money is paid.

(No. 59, Act IX.) Before applying this Article to a particular case, it must be seen that if Article 81, 82, 99, 100 or 107 does not apply to it.

When co-parcener's manager borrowing money applies it to family debt, right to sue for contribution dates from date of application of money to joint debt.

(a) In *Ram Kisto Roy v. Muddun Gopal Roy*,⁽²⁾ the manager of a joint-family sued for contribution, on the ground that plaintiff had borrowed money and applied it in the payment of certain joint-family expenses, and that he had borrowed again to pay off the first loan and had liquidated the second loan from his private funds. It was held that plaintiff's cause of action arose from the date on which he had made payments on account of the joint estate, and not having sued within six years of that date, he was out of court. (Under Act XIV of 1859.)

Suit seven years after separation for a moiety of debt raised by

(b) In *Sunkur Pershad v. Goury Pershad*,⁽³⁾ the

(1) 1 Weekly Notes, 63.

(2) 12 W. R., 194

(3) 1 L. R., 5 Calc., 321.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

plaintiff who was living jointly with his brother the defendant, in 1867, executed a bond for monies advanced to him, which monies were applied by him for the joint benefit of himself and the defendant. In the year 1868, the plaintiff executed another bond for the same purpose. In 1870, the plaintiff and defendant separated, and the lender, thereupon, sued the plaintiff upon the bond executed in 1867 and obtained a decree. In 1874, the plaintiff executed a fresh bond in favor of the decree-holder in order to avoid execution of the decree and to retire the bond of 1868. In 1877, (within three years from the date of the fresh bond), the plaintiff sued his brother to recover a moiety of the sum secured thereby. It was held, that the date upon which money was paid by the plaintiff for the defendant must have been before 1870, and that, therefore, the suit was barred by limitation under Act IX of 1871, schedule 2, Article 59.

defendant's brother when joint, held barred though debtor had admitted it within three years before suit.

Suit was held barred under Article 59 of Act IX of 1859.

(c) In *Tor Abali Khan v. Nilruttun Lal*,⁽¹⁾ one *T*, drew on the 29th May, 1873, from the plaintiffs' firm a sum of money which *T* had deposited with them in the name and to the credit of a third person. On the death of such third person, his heirs sued the plaintiffs for the money, obtained a decree in January, 1878, and recovered the money in January, 1883. In February, 1884, the plaintiffs' sued *T*, the heirs of the third party and another person to recover the money they had been compelled to pay under the decree. It was held, that the plaintiffs' cause of action arose when he actually paid the money on the 15th January, 1883, and that though there is no Article precisely applicable to the case, the court thinks that this Article (61) appears most applicable.

Suit for money which plaintiff was obliged to pay in consequence of defendant's act, held to fall under this Article.

(1) I. L. R., 13 Calc., 155.

Description of suit.	Period of limitation.	Time from which period begins to run.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	PART VI. Three years.	When the money is received.

Suit to recover plaintiff's money which defendant wrongfully obtained from third-party on false pretence, held to fall under this Article.

(a) This Article is exactly similar to Article 60 of Act IX of 1871. In *Raghumoni Adhikari v. Nilmoni Singh Deo*,⁽¹⁾ the plaintiff, sued in January, 1874, to recover money which a third-party had deposited in plaintiff's name in the Collectorate, and which the first defendant, in collusion with the second defendant, drew in January, 1869, without the plaintiff's knowledge and consent. The Lower Courts allowed the claim, which they considered to fall under Articles 48 and 90 of Act IX of 1871. The High Court on appeal reversed the decision, holding that the claim was barred by this Article 62. Markby, J., observes that the plaintiff, "does not sue the defendant on the ground that he had committed a criminal offence, but that by means of some fraud in combination with another person he got possession of the plaintiff's money. Now, that is exactly the case which would be covered by Article 60 of the schedule of the Limitation Act, if we read that Article as we think we ought to do in connection with the English Law. A suit for money received by the defendant for the plaintiff's use evidently points to the well-known English action in that form, and it appears from two cases quoted in Bullen and Leake on Pleading, 3rd edition, page 47 (the cases alluded to by the learned Judge are, *Litt v. Martindale*, 18 C. B., 314; and *Andrews v. Hawley*, 26 L. J., Ex., 323), that that form of action is appropriate to the recovery of money under such circumstances as these. It is said there that where the defendant has wrongfully obtained the plaintiff's money from a third-party, as by a false pretence, it may

(1) I. L. R., 2 Calc., 393.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI. Three years.		

be recovered in this court. So where defendant wrongfully obtained from the plaintiff's debtors the payment of their debts under a fraudulent misrepresentation that he had an authority to collect them, the plaintiff was held entitled to recover the amount under this count. We think, therefore, that Article 60 of the 2nd schedule of the Limitation Act contains the law which ought to govern this case, and that the limitation ought to run not from the time when the money was demanded, but from the time when the money was received."

(b) In *Johuri Mahton v. Thakoor Nath Lukee*,⁽¹⁾ the plaintiff deposited money with defendant on the understanding that it should be with the latter as security for the due performance of a lease to be renewed, but it should be returned if the lease were not renewed. It was held that the suit is governed by this Article and that the period begins to run on the happening of the event.

Suit for return of deposit made as returnable on a certain event, falls under this Article.

(c) After the separation of two members of a joint Hindu family, certain bonds and landed property continued to be held jointly. The defendant as head of the family, held most of the bonds in his name. In 1874, he obtained a decree on one of the bonds and realised the amount the same year, when the plaintiff's claim to a share was disallowed. The plaintiff sued to recover his share in October, 1882. It was held that the claim was barred under this Article and that Article 127 did not apply. *Thakur Prasad v. Partab*.⁽²⁾

A divided member's suit to recover his share in money realised under a bond held in common, comes under this Article.

(d) In *Kundun Lal v. Bansī Dhar*,⁽³⁾ plaintiff and defendant were brothers, and they were heirs to one who died in 1874, leaving a house and a sum of money with a banker. The defendant realised the money on the 22nd July, 1875, and the plaintiff sued for his share on

This Article governs suit for plaintiff's share of his ancestor's money drawn by his brother.

(1) I. L. R., 5 Calc., 830. | (2) I. L. R., 6 All., 442.

(3) I. L. R., 3 All., 170.

Description of suit.	Period of limitation.	Time from which period begins to run.
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the 6th November, 1878. The plaintiff alleged that he knew of the realization of the money in August, 1878. It was held that the claim was governed by this Article and that time ran from the date that the money was drawn by the defendant.

Suit of one co-sharer for his share against another bound to recover arrears, falls under this Article.

(e) In *Dulabh Vahuji v. Bansi Dharrai*,⁽¹⁾ plaintiff, with another person, obtained in 1862, a declaration of his title to a share in a *deshpande vatan* against the defendant who was bound by the decree to recover the arrears. The plaintiff brought the present suit to recover his share of the arrears collected. The District Judge gave six years' arrears. Following *Harmukhgaury v. Harisukh Prasad*,⁽²⁾ it was held, that the plaintiff was entitled to three years arrears only, and that non-participation of profits by the plaintiff for more than 12 years from the date of the previous decree does not extinguish his title, and that he can recover arrears for three years preceding the date of his suit to recover them. The above decision was followed in *Desai Maneklal Amratlal v. Desai Shivilal Bhogilal*,⁽³⁾ in which it was held that the limitation of three years under Article 62 of the Limitation Act XV of 1877, schedule 2, and not that of 12 years under Article 132 was applicable to a claim by one sharer against another of an allowance attached to a hereditary office, and not more than three years' arrears to recover arrears of the Amin Sukhdi allowance could, therefore, be awarded.

Non-participation of profits by plaintiff for more than 12 years from previous decree does not extinguish his title.

(f) In *Arunachala v. Ramaswamy*,⁽⁴⁾ a son sued his father and brother for partition, and obtained a decree in April, 1878, for one-third of the property and one-third of the debt due to the family. In May, 1878, the debtor having received no notice of the divided son's

Divided son's suit for his share of debt realised by father, falls under this Article.

(1) 1. L. R., 9 Bom., 111. | (3) 1. L. R., 8 Bom., 426.
(2) 1. L. R., 7 Bom., 191. | (4) 1. L. R., 6 Mad., 402.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

claim, paid the debt to the father, who died, and his estate passed to the surviving son. The decree-holder sued in July, 1881, his brother, for one-third of the debt. It was held that the suit was barred by this Article.

(g) *Bhawani Kuar v. Rikhi Ram*,⁽¹⁾ was brought by the holder of a decree for money which had been sold in the execution of a decree against him to recover from the auction purchaser the money he had realised under the decree, the sale thereof having been set aside. It was held that the suit was governed by this Article and was not one for damages.

Suit for money realised by auction purchaser of a decree, the sale of which was since set aside, falls under this Article.

(h) In *Ram Kishan v. Bhawani Das*,⁽²⁾ *A*, in execution of his money decree dated August, 1871, attached his debtor's property in April, 1872. *B* subsequently attached and sold it for his mortgage decree of August, 1871. Money was paid to *B*; and *A*, as first attaching creditor, obtained the Appellate Court's order for payment. *B* refunded the money which was paid to *A*. *B* sued *A* to recover the money by establishing his prior right to the same. It was held by a majority of the Full Bench that the suit was governed by Article 60 of Act IX of 1871, on the ground that this was not a suit to set aside the order inasmuch as it was a nullity. This case was distinguished from *Gowri Prosad Kundu v. Ram Ratan Sircar*,⁽³⁾ which was a suit brought in August, 1883, for refund of sale proceeds paid in accordance with an order of the court made in September, 1880, for rateable distribution under section 295 of the Criminal Procedure Code of 1882. In this case the court held that the suit was one to set aside the order and was barred under Article 13.

Suit to recover money paid to defendant under court's order, held to fall under the corresponding Article 60 of Act IX of 1871.

This is distinguished from suit for refund of sale proceeds under an order of court which fell under Article 35.

(i) Under section 8 of the Vatatandars' Act III of

Suit for difference between what was paid

(1) I. L. R., 2 All., 354.

(2) I. L. R., 1 All., 333.

(3) I. L. R., 13 Calo., 159.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

under Collector's order and the amount since reduced in appeal by Revenue Commissioner, falls under this Article.

1874, (Bombay) the Collector passed an order that a contribution should be paid by the holders of a part of of the *shetsandi vatan* towards the annual emolument of the office-holder. As payment was not made, he caused the defaulter's moveable property to be sold on the 18th May, 1881, as for an arrear of land-revenue and part of the sale-proceeds to be paid over to the office-holder. The defaulters had, in the meantime, appealed to the Revenue Commissioner, who eventually, on the 17th December, 1881, amended the Collector's order by reducing very considerably the amount of contribution to be paid to the office-holder. Thereupon, the defaulters filed a suit on the 9th April, 1884, to recover from the office-holder the difference between what he had received under the Collectors's order and what he ought to have received according to the Revenue Commissioner's order. It was held that the suit was one for money had and received by the defendant to the plaintiff's use, and as such, governed by Article 62 of schedule 2 of the Limitation Act XV of 1877. *Ladji Naick v. Musabi*.⁽¹⁾

Suit by a clerk for salary drawn from Treasury by the head of the office, is a suit for money had and received.

(j) In *Abhaya Charan Dutt v. Haro Chandra Das Banik*,⁽²⁾ the defendant, who was a *Batwarra Ameen* employed by the Collector, drew from the public Treasury, at *Backergunge*, a sum of money to pay the establishment, but failed to pay the plaintiff who was a *moharir* under him. In a suit against the *Ameen* for recovery of the salary after a lapse of three years from the time when the salary became due, it was held that the claim was for money had and received on account of plaintiff, and that he might bring his suit within three years from the date of such receipt.

Suit by one of two decree-holders for his share against

(k) A decree obtained by *A* and *B*, was transferred by

(1) I. L. R., 10 Bom., p. 666. | (2) 4 B. L. R., App., 68.

Description of suit.	Period of limitation.	Time from which period begins to run.
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B to *C*, without the knowledge of *A*. *C* executed the decree; and *A* subsequently sued *C* for his share of the proceeds. It was held that if *A* had any cause of action against *C*, it would be for money had and received to *A*'s use, and the suit would be governed as to limitation by this Article. *Weber Ali v. Gaddai Behari*.⁽¹⁾

the assignee of the other, falls under this Article.

(1) A suit to recover certain sums of money which the defendants, who held a usufructuary mortgage of certain lands belonging to the plaintiffs, had received as compensation for portions of such land which had been taken up for public purposes, was held to be barred by this Article not having been brought within three years of the date when the monies were paid to the mortgagees. The right to such monies was wholly independent of, and distinct from, the right of redemption of the mortgaged property. *Abul Hassan v. Chiranjii*.⁽²⁾

Suit to recover compensation for land drawn by usufructuary mortgagees, falls under this Article.

(m) Where there was a contract between plaintiff and defendant, that defendant should purchase a dwelling-house benamee on account of plaintiff and reconvey it to plaintiff on his paying up in instalments a certain sum of money with interest, and plaintiff, seven years after his last payment, sued to recover some payments which he had made in excess of his agreement, and the first court dismissed the suit as being barred by limitation, but the second court decreed the suit on the plea that the plaintiff's payments were deposits, and fell within Article 147 of the 2nd schedule of the law of limitation; it was held by the High Court, that Article 147 applies to deposits recoverable in specie; that plaintiff's payment in this case was a simple over-payment; and that the recovery of it was barred by limitation under Article 60. *Radha Nath Bose v. Bama Churn Mookerjee*.⁽³⁾

The right to such money is independent of the right of redemption.

Suit to recover what was overpaid by mistake, falls under this Article, (May 1876.)

Article 147 of Act IX of 1871 applies to deposits recoverable in specie.

(1) 2 C. L. R., 165.

(2) Weekly Notes, 54.

(3) 25 W. R., 415.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Suit for sale proceeds which the plaintiff had an equitable right to follow in the defendant's hands, does not fall under this Article.

(n) In *Gurudas Pyne v. Ram Narain Sahu*,⁽¹⁾ the defendant, as an agent of A, sold goods entrusted to him by A, who died after the plaintiff had obtained a decree against him for their conversion; and where the defendant, as agent of the representative of A, retained the proceeds which the plaintiff who brought the present suit, had an equitable right to follow in the defendant's hands, the Privy Council observed that the suit did not fall either within Article No. 60 or No. 48, but came within Article 118.

So is a suit against trustee for possession of share and for account and profits.

(o) In *Muhammad Habibullah Khan v. Safdar Husain Khan*,⁽²⁾ which was a suit against trustee for possession of share, and for account and recovery of profits, it was held that Article 62 did not meet a claim like the present relating to an equitable claim against a trustee liable to account in which the relief sought was to have an account taken of the trust property, and to recover what might be due.

Suit by proprietor of a "mohalla" for one-fourth of the value of a house sold according to ancient custom, held not governed by this Article, but by Article 120.

(p) C, the proprietor of a certain "mohalla," sued K, who had purchased a house situated in the mohalla, at a sale in the execution of his own decree, for one-fourth of the purchase-money, founding his claim upon an ancient custom obtaining in the mohalla, under which the proprietor thereof received one-fourth of the purchase-money of a house situated therein, whether sold privately or in the execution of a decree. It was held that the period of limitation applicable to such a suit was that prescribed by Article 120, schedule 2 of Act XV of 1877, and not by Article 62 or by Article 132 of that schedule. *Kirath Chand v. Ganesh Prasad*.⁽³⁾

Suit for compensation money drawn out of the Collectorate by a widow's lessee when widow's

(q) In *Nund Lall Bose v. Meer Aboo Mahomed*,⁽⁴⁾ a suit was instituted by the heirs of a Hindu widow against her Mokurari lessee, to recover compensation money drawn

(1) I. L. R., 10 Cal., 860.

(2) I. L. R., 7 All., 25.

(3) I. L. R., 2 All., 358.

(4) I. L. R., 5 Cal., 597.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

by him out of the Collectorate, while the heir's suit against the lessee for possession was pending. It was held that the suit was governed by Article 118 and not 60 of Act IX of 1871.

heir's suit against him for possession was pending, does not fall under this Article.

63.—For money payable for interest upon money due from the defendant to the plaintiff.	Three years.	When the interest becomes due.
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(a) In *Makundi Kuar v. Balakishen Das*,⁽¹⁾ plaintiff deposited his money with the defendants, a firm of bankers, on the 30th August, 1863. In January, 1867, an account was stated showing a balance due to plaintiff, consisting of the original deposit and interest at 6 per cent. per annum. In February, 1876, the defendant offered to pay plaintiff the said balance with interest at 4 per cent. from January 1867, while the plaintiff claimed interest at 6 per cent. The plaintiff, however, on the 14th and 17th February, 1876, accepting payment of the balance and interest at 4 per cent., sued on the 11th February, 1879, for the difference between 4 and 6 per cent. It was held, that the suit must be regarded as one for a balance of money payable for interest for money due, to which clause 9, section 1, of Act XIV of 1859; Article 61 of Act IX of 1871, and Article 63 of Act XV of 1887, had successively applied, and that the suit was barred by limitation.

Suit for balance of money payable for interest on money deposited with a firm of bankers, falls under this Article.

(b) In *Ganpat Pandurang v. Adarji Dadabhai*,⁽²⁾ Westropp, C. J., observes: "We think that the intention of the parties to it was that both interest and principal should be charged upon the property mentioned in it, and the subject of the title-deeds previously deposited, and therefore, that neither the interest nor the principal is barred, whether regard be had to Article 132 or Article 149." The Madras High Court have also held so in

Period of limitation applicable to principal, applies to interest when both are charged on real property.

(1) I. L. R., 3 All., 328.

(2) I. L. R., 3 Bom., 332.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	
<p>Agreement to pay stipulated rate of interest even after due date is enforceable.</p>		<p><i>Davani Ammal v. Ratna Chetti.</i>⁽¹⁾ In <i>Baldeo Panday v. Gokal Rai</i>,⁽²⁾ it was held that when a bond contains an express contract for payment of the stipulated rate of interest even after due date, such contract is enforceable.</p>
<p>64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.</p>	Three years.	<p>When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.</p>

(a) (No. 62, Act. IX.) Article 62 of Act IX of 1871 covered any verbal or unsigned statement of accounts. *Nand Ram v. Ram Prasad*;⁽³⁾ but it was held by a Full Bench of the Punjab Chief Court, that a statement of accounts does not give a fresh starting point under Act IX of 1871, unless, 1st,—it is in writing, and satisfies the requirements of section 20, Act IX of 1871, (section 19 of this Act); or 2nd,—it amounts to a new contract between the parties, in which case it furnishes a new cause of action. *Ratta Ram v. Mussammat Nano*. (Punj. Rec., No. 3 of 1878).⁽⁴⁾ Article 64 of the Act of 1877 attached a new condition to the suit, *viz.*, that the accounts must be signed by the defendant or his agent duly authorized in that behalf. An account stated not signed by the defendant and a suit on which would have been within

(1) I. L. R., 6 Mad., 417.

(2) I. L. R., 1 All., 604.

(3) I. L. R., 2 All., 641.

(4) Rivaz's Limitation Act, p. 117.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

time if instituted when Act IX of 1871 was in force, was held not to fall under Article 64 of the Act of 1877. *Zul-fikar Husain v. Munna Lal*.⁽¹⁾

(b) In *Laljee Sahoo v. Rughoonundun Lall Lahoo*,⁽²⁾ Garth, C. J., observes: "It was contended before us in the first instance, that the admission made by the defendant in the *ikrarnama* of 24th December, 1874, amounted, in fact, to an account stated with the plaintiff; and if that were so, of course the account stated would be itself sufficient to enable the plaintiff to maintain an action. But in order to make it an account stated, the plaintiff must have been a consenting party." Defendant's firm balancing the plaintiff's deposit account and signing the statement does not constitute account stated. It is necessary to have entries of debits and credits on both sides. (See *Notes G. and H.*)

Account stated is an adjustment assented to by both parties.

(c) The "ruzu" or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract. If it is to be used as an acknowledgment, giving a fresh starting point for computing a new period of limitation, it must be made in writing and signed before the expiration of the period of limitation prescribed. If it is to be used as evidence of a new contract, furnishing a basis for a new cause of action, it must contain a promise in writing duly signed as required by the Contract Act IX of 1872, sec 25, clause 3, a bare statement of an account not being such a promise. *Ramji v. Dharma*.⁽³⁾

Account stated can operate either as revival of an original promise, or as evidence of a new contract.

(d) In *Dukhi Sahu v. Mahomed Bikhui*,⁽⁴⁾ defendant was a customer of the plaintiff who had a shop for the sale of cloth. He used to take articles on credit and make part-payments from time to time. An account was

C. H. F. B. Statement of account not signed by defendant, does not fall under this Article. (Sept. 1883.)

(1) I. L. R., 3 All., 148, F. B.

(3) I. L. R., 6 Bom., 683.

(2) I. L. R., 6 Calc., 451.

(4) I. L. R., 10 Calc., 284.

Description of suit.	Period of limitation.	Time from which period begins to run.
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Unsigned statement of account does not amount to a new contract.

A. H. also held so and nevertheless remarked that unbarred items might be recovered.

Adjustment of cross demands constitutes a new contract under Act XIV 1859. (May 1871.)

kept by the plaintiff of these transactions. The account was examined in the presence of the defendant, and the amount claimed in the suit was found to be the balance of the debt due from the defendant, who admitted its correctness. It was held, that the above statement of account not being signed by the defendant did not fall within the terms of this Article inasmuch as it did not amount to a new contract so as to entitle the plaintiff to claim a new period of limitation from the date thereof. This Full Bench Ruling overrules the decision in *Sheikh Akbar v. Sheikh Khan*,⁽¹⁾ in which a Division Bench had held in May, 1883, that the period of limitation for suits on accounts stated is the same, whether the accounts are stated verbally or in writing, and is governed by Act XV of 1877, schedule 2, clause 64. In *Thakurya v. Sheo Singh*,⁽²⁾ the Allahabad High Court held so, and remarked that as the account has not been signed by the defendant, the plaintiff cannot claim the benefit of Article 64, but might be regarded as suing merely for money lent, and some of the items of money lent that were not barred by limitation might be recovered.

(e) To render an arrangement, come to orally, for the payment of the balance of an antecedent debt on a settlement of accounts available here in support of a suit brought after the expiration of the period of limitation applicable to such debt, it must, we are of opinion, be clearly shown to have amounted to a new valid contract to pay the balance, which extinguish the original cause of action. As observed by Parke, B., in *James v. Ryder*, 4 M and W 32, a mere acknowledgment within the six years of an antecedent debt cannot be sufficient; there must be a new contract." In England, such an arrange-

(1) I. L. R., 7 Calc., 256. | (2) I. L. R., 2 All., 872.

Description of suit.	Period of limitation.	Time from which period begins to run.
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ment might also be made available in answer to a plea of the Statute of Limitations, on the ground of part-payment evidencing a promise to pay the balance:— See on this point *Worthington v. Grimsditch*, 7. Q. B., 479, and the judgment of Baron Alderson in *Ashby v. James*, 11 M. and W., 542. But that ground is excluded by the provisions of the Indian Act of Limitations. Then, does the arrangement alleged to have taken place between the appellant and the respondent evidence a new contract? The striking of the balance and the admission that the amount was due evidenced a present promise to pay it, but that was nothing more than the law already implied from the previous existence of the debt, and was all that such an executed consideration could support, and it is obvious that, if nothing more than that were necessary, the limitation bar might always be evaded by acknowledgments and admissions not in writing. What we must look to see is, whether the arrangement involved any new consideration for the promise to pay the balance. Now, where there are cross demands, and on a settlement of accounts, items agreed to on one side are wiped out by an appropriation to their discharge of admitted items of claim on the other side, and thereupon a balance is struck and payment promised, the mutual agreement to set off, *protanto*, one set of items against the other constitutes a new consideration for the promise to pay the settled balance, and both make a new contract. For this, *Ashby v. James* (11 M and W., 542) is a direct authority. But where there is no cross claim to be set off, and no new agreement of appropriation, a settlement of the balance due on the examination of accounts is merely a statement of an antecedent debt. The parties simply agree as to how much of the debt remains due. In such a case there is plainly no new contract. This distinction

Description of suit.	Period of limitation.	Time from which period begins to run.
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is briefly expressed in *Laycock v. Pickles* (33 L. J. Q. B., 43.) Blackburn, J., there said: "In common talk an account stated is treated as an admission of a debt due from the defendant to the plaintiff, but there is also a real account stated, which is equivalent to what is called in the old law an *insimul computaverunt*, when several items of claims are brought into account on either side, and being set against one another, a balance was struck, and the consideration for the payment of the balance was the discharge on each side. And the arrangement in that case was upheld as being such a real statement of account." *Hirada Karibasappah v. Gadigi Muddappa*.⁽¹⁾

Claim on account signed by defendant, cannot be saved by simultaneous verbal agreement to pay the debt at a fixed time.

(f) In *Dagdusa Tilakchand v. Shamad*,⁽²⁾ the defendant undertaking to pay plaintiff on behalf of a third-party, signed an account by his mark on 2nd January, 1881. The suit was brought on the account on the 14th January, 1884, or 12 days after three years, and the plaintiff alleged that the defendant, while signing the account, made a verbal agreement to repay the debt one month after that date, and contended that the cause of action arose on the 2nd February, 1881. A Division Bench (Sergeant C. J., and Nanaboy Haridas J.) held that this Article is too clear to admit of any doubt on the point. As provided therein, the ordinary period of limitation for a suit on an account stated within the meaning of the Article is three years from the date of the statement of account. The only thing which extends such period is a simultaneous *written agreement* signed by the defendant or his agent making the debt payable at a future time. The simultaneous verbal agreement therefore, though held proved in this case, cannot have the effect of extending the three years' limitation.

(1) 6 M. H. C. R., 197. | (2) I. L. R., 8 Bom., 542.

Description of suit.	Period of limitation.	Time from which period begins to run.
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(g) In *Nahanibai v. Nathu Bhan*,⁽¹⁾ a sum of money was deposited with the defendant's firm in 1857; three years afterwards, interest was paid by the firm, which was debited in the ledger to the creditor against the credit of a like amount. In 1875, a balance was struck and carried to another account signed by the defendant, acknowledging the same to be "due for balance of old account." In 1878, the account was again balanced, and the balance was again transferred to a fresh account similarly signed. The plaintiff sued in 1880 to recover the balance due on account signed by the defendant on the 26th October, 1878. It was held that the transaction did not amount to an account stated within the meaning of this Article to constitute which, it is necessary to have entries of debits and credits on both sides.

Case of an account signed, not held to be an account stated as there were no entries of debits and credits on both sides.

(h) A Khata consisting of one item only on the debit side and bearing the mark of the debtor was held to be a mere acknowledgment, and not an account stated. *Tribhovan Gangaram v. Amina*.⁽²⁾

Khata is not an account stated.

(i) *A*, being the holder of a decree against *B*, *B* on the 7th July, 1885, entered into a Kistbandi and filed it in court, setting out that he would pay off the debt due under the decree by certain instalments, and that, in default of payment of one instalment, the whole amount of the debt might be recovered by taking out execution of the decree. By the Kistbandi, certain immoveable property was pledged to secure the debt, but the Kistbandi was not registered. *B* failed to pay the first instalment, which fell due on the 14th August, 1875, and *A*, on the 19th June, 1878, applied for execution of his decree, but the application was refused and *A* referred to a regular suit. In a suit brought by *A* on the 29th

Kistbandi agreement filed during execution, treated as account stated in a suit brought on the Kistbandi to enforce it.

(1) I. L. R., 7 Bom., 414. | (2) I. L. R., 9 Bom., 516.

Description of suit.	Period of limitation.	Time from which period begins to run.
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January, 1879, against *B* for the whole debt due under the decree, it was held, that, inasmuch as no appeal had been preferred against the order disallowing execution, *A* was bound by that decision, but that the suit might be taken to be one for an account stated in writing with an agreement for payment at a certain stated period of time as regards the instalments due, which were not barred by limitation, the suit as regards the instalments which had not fallen due being premature, and those previous to the 29th January, 1876, being barred by this Article. *Bhekhan Dobey v. Rajroop Kooer.*⁽¹⁾

Old balance shown as consideration in a sale-deed not completed, might be assumed as an account stated and 3 years allowed from the date of the deed.

(j) In *Dhum Singh v. Ganga Ram*,⁽²⁾ in September, 1879, *D* executed to *B* a sale-deed for Rs. 55,000, which *B* was to pay by giving *D* credit for Rs. 33,000 which he owed to *B* before September, 1879, and pay the balance in cash to *D*. *B*'s suit for specific performance of the contract of sale against *D* was rejected by the High Court in March, 1884. In September, 1884, *B* sued *D* for recovery of the sum of Rs. 33,000 with interest. *B* contended that the debt should be treated as a deposit made on account of sale. It was held that assuming that an account was stated, the suit was barred, as it was not brought within three years from the latest possible date on which the debt can be said to have become due, namely, 1st September, 1879.

65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years.	When the time specified arrives or the contingency happens.
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(a) (No. 63, Act IX.) This is a general Article for suits for compensation for the breach of a promise not

(1) I. L. R., 8 Calc., 912.

(2) I. L. R., 8 All., 214.

Description of suit.	Period of limitation.	Time from which period begins to run.
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in writing to do anything, while Article 115 refers to suits for compensation for breach of any unregistered contract. Article 116 relates to a suit on a registered contract. *Kishen Lal v. Kinlock*.⁽¹⁾

(b) "Compensation" is the general term used in the Indian Contract Act (section 73) to denote the payment which a party is entitled to claim on account of loss or damage arising from breach of contract. *Vythilinga Pillai v. Thetchanamurti Pillai*,⁽²⁾ and the suit is none the less a suit for compensation, because it is brought for the specific sum due on a bond. *Ganesh Krishn v. Madhavray Ravji*.⁽³⁾

(c) *A*, verbally became surety upon a bond executed by *B*, for repayment in May, 1872, to the plaintiff of certain advances, promising "if *B* does not pay eventually (*shesh projunto*) I will." Default was made, and in April, 1878, the plaintiff filed a suit against both *A* and *B*, the suit being clearly barred as against the latter. Held, that the words "*shesh projunto*" could not be taken as limited to the time specified in the bond, and that the Lower Court, in order to determine whether the suit was barred against *A*, must find upon the evidence when a demand was made upon him for payment, and then apply this Article. *Bishumber Dey Poddar v. Hungsheshur Mookerjee*.⁽⁴⁾

"Compensation."

Where a surety promises "if the principal does not pay eventually (*shesh projunto*) I will," time does not run in favour of surety until creditor demands compensation.

(d) Where a vendor contracts to deliver goods within a reasonable time, and payment is to be made on delivery, if before the lapse of that time he merely expresses an intention not to perform the contract, the purchaser cannot at once bring his action unless he exercise his option to treat the contract as rescinded. *Mansuk Das v.*

When a party to a contract repudiates it the injured party may at his option sue at once or wait till expiry of time for performance.

(1) I. L. R., 3 All., 712.

(2) I. L. R., 3 Mad., 77.

(3) I. L. R., 6 Bom., 76.

(4) 4 C. L. B., 34.

Description of suit.	Period of limitation.	Time from which period begins to run.
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Rangayya Chetti.⁽¹⁾ As to the doctrine that where a party to contract utterly repudiates it, or puts it out of his power to perform it, the injured party may at his option sue at once or wait till the time for performance has elapsed, see *Hochster v. DeLatour* (2 E & B, 678; 22 L. J. Q. B. 455 S. C.) in which Campbell C. J., overruled Parke B's doctrine in *Phillpotts v. Evans*, (5 M & W. 475) that the injured party must wait till the time fixed for performance.

66.—On single bond where a day is specified for payment.	Three years.	The day so specified.
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Single bond expresses a single obligation without alternative conditions.

(a) "A single or simple bond expresses a single obligation without alternative conditions. Compare *Lachman Singh v. Kesri*. (1 Weekly notes, 117.) It has been held by the Chief Court, Punjab, that the word bond, as used in the corresponding Article of the Act of 1871, includes a tamssuk. See *Shadiram v. Abdal Rahman* (Punj. Rec., No. 3 of 1874,) and *Haji v. Mussammatt Hasan* (*Ibid*, No. 6. of 1874.) The correctness of the former ruling has, however, been doubted by a majority of the Full Bench of the same court, in *Nathu v. Darbari* (Punj. Rec., No. 77 of 1879), though this latter case was decided on the ground that even if Article 66 of the second schedule of Act IX of 1871 applied to the suit, Article 58 of the same Act also applied, and under that Article, applying section 2 of this Act, the suit was in time. Under the present Act this question will have to be decided with reference to the definition of "bond" now given in section 3."⁽²⁾

Act XV of 1877 defines "bond."

Single bond is a bill or written engagement for payment of money without a penalty.

(b) In *Lachman Singh v. Kesri*,⁽³⁾ plaintiff sued on the 18th January, 1879, on a mortgage deed by way of

(1) 1 M. H. C. B., 162. | (2) *Rivaz's Limitation Act*, p. 118.

(3) 1 L. R., 4 All., 3.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI. Three years.		

conditional sale, dated 3rd February, 1871. The plaintiff waived his claim on property and sued for money as simple debt. It was held that this Article was not applicable, as the claim of the plaintiff was not based on a single bond, that is to say, a bill or written engagement for payment of money without a penalty.

Suit for money on a simple mortgage deed providing for foreclosure does not fall under this Article. (June 1881.)

(c) In *Ganesh Krishn v. Madhavrav Ravji*,⁽¹⁾ it was held, that a suit to recover specific sum of money due upon a registered bond or other written contract, is a suit for compensation for breach of contract in writing registered, within the meaning of Article 116.

Suit on registered bond does not fall under this Article 116.

(d) In *Narain Babu v. Gouri Persad Bias*,⁽²⁾ the defendant executed a bond, which provided that interest should be payable monthly, and that the principal should become due within six months from the date of execution; the bond contained a clause to the effect that if the interest should not be paid according to the terms of the bond, or if the creditor should feel any doubt as to his being able to realize the principal, he should not be bound to wait until the expiry of the six months in order to bring his suit, but should be at liberty to realize the principal and interest in any manner he might choose. It was held that the suit brought within three years from the date of the day specified for payment, was not barred by limitation and that the suit fell under the corresponding Article 65 of Act IX of 1871 and not under Article 75.

Bond which makes interest payable monthly, loan in six months, and entitles creditor to sue within time on default or on doubt of debtor's ability, falls under this Article.

(e) In *Ball v. Stowell*,⁽³⁾ bond specified a day for repayment of principal, and entitled the creditor to sue before or after the term on failure to pay any instalment of interest or premium on a policy of insurance made over to the creditor by way of collateral security. Spankie, J., observes: "after full consideration of the point, I come

Bond specifying a day for repayment of principal, and entitling creditor to sue before or after term on failure to pay interest or premium, is observed not to fall under this Article.

(1) I. L. R., 6 Bom., 75. | (2) I. L. R., 5 Cal., 21.

(3) I. L. R., 2 All., 331

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

to the conclusion that there is something more in the bond than meets Article 66. It is a single bond, and there is a day specified for payment, but there is also a liability for immediate demand of the entire amount due before the expiration of the term of the bond on the occasion of default of payment. This provision may, and, I think, does take the bond out of Article 66, and, in the absence of any provision for it in the schedule, places it under Article 80."

67.—On a single bond where no such day is specified. | Three years. | The date of executing the bond.
(No. 66, Act IX.)

68.—On a bond subject to a condition. | Three years. | When the condition is broken.
(No. 67, Act IX.)

69.—On a bill of exchange or promissory note payable at a fixed time after date. | Three years. | When the bill or note falls due.

Bill of exchange.

(a) (No. 68, Act IX.) Bill of exchange is a negotiable security in the form of an open letter of request, or an order from one person to another, desiring him to pay, on his account, a sum of money therein mentioned to a third person. It is consequently an assignment to a third person of a debt due to the person drawing the bill, from the person upon whom it is drawn.—*Wharton*.

Definition by section 5 of Act XXVI of 1881.

Section 5, Act XXVI of 1881, defines a bill of exchange to be an instrument in writing containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Promissory notes.

(b) Section 4, of Act XXVI of 1881, defines a promissory note to be an instrument in writing (not being a bank note or a currency note) containing an uncondi-

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
Three years.		

tional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.—It is generally negotiable by being made payable to order or to the bearer, for it is rarely made payable only to a particular person named therein.—*Wharton*. Regarding the date, maturity of the negotiable instrument, see sections 22 to 25, Act XXVI of 1881. Article 78 provides for a suit on a bill of exchange dishonored by non-acceptance.

70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years.	When the bill is presented.
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(No. 69, Act IX.) As to presentment for payment, see sections 62 to 76, Act XXVI of 1881.

(a) Section 21 of Act XXVI of 1881, runs thus :—In a promissory note or bill of exchange, the expressions “at sight” and “on presentment” mean on demand. The expression “after sight” means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance or protest for non-acceptance.

“At sight” “on presentment”
“after sight.”

71.—On a bill of exchange accepted, payable at a particular place.	Three years.	When the bill is presented at that place.
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(No. 70, Act IX.)

72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years.	When the fixed time expires.
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(a) (No. 71, Act IX.) Where a promissory note was made payable “after six months, whenever the payee should demand the same,” with interest, it was held that the law of limitation began to run upon the expiration of

B. H. construed the words “after six months, whenever the payee should demand the

Description of suit.	Period of limitation.	Time from which period begins to run.
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same" under
Act XIV of 1860.
(March 1870.)
English cases.

six months from the date of the note. *Jeaunissa Ladli Begam Saheb v. Manikji Kharsetji.*⁽¹⁾

(b) "In the case of a bill or note payable at a fixed time after date, the Statute runs only from the time at which they become due, and that even if the action is for money lent for which the note is a security, (*Wittersheim v. Countess of Carlisle*, 1 Hy. Blacks. 631 ; *Buckler v. Moore*, 1 Mod. 89), because the money does not become payable till the time has expired. If, however, the bill be payable at sight, the Statute runs from the presentment, (*Dixon v. Nuttall* 1 Cr. M. and R. 307 ; *Holmes v. Kerrison*, 2 Taun. 323,) but if payable at a specified period after sight or after demand, it does not begin to run till the expiration of such period. (*Thorpe v. Booth*, 1 Ry. and Moo. 388 ; and see *Moore v. Petchell*, 22 Beav. 172.) Where, however, a defendant accepted a bill in blank which was not filled up for 12 years, it was held that he was liable at the suit of an innocent holder for value, and that the time did not begin to run till the bill became due as filled up. If, however, a bill or note be made payable on demand, the Statute runs from the date of making or accepting, because the bill or note is payable immediately, and no demand is necessary. And the same rule applies to any promise to pay on demand.⁽²⁾

73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years.	The date of the bill or note.
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This Article does not govern pro-note payable on demand at any time within six years.

(a) (No. 72, Act IX.) In *Sanjivi v. Errapa*,⁽³⁾ plaintiff sued for money on a pro-note dated September, 1875, whereby defendant promised payment with interest at any time within six years on demand. Demand was

(1) 7 B. H. C. R., 36.

(2) *Darby and Bosanquet*, p. 19.

(3) 1 L. R., 6 Mad., 290.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VI.
Three years.

made in February and the suit brought in March, 1881. It was held that it was not simply a pro-note payable on demand, but a special agreement which is not forbidden by the Limitation Act, and as no period of limitation has been specially provided for suit on such an agreement the case was governed by Article 120.

(b) In *Natha Hira v. Janardhan Ramchandra*,⁽¹⁾ the holder of a promissory note payable on demand, dated 14th April, 1870, demanded payment on 8th December, 1872. The maker then paid interest in advance up to 1st April, 1873, upon the condition that the holder should make no demand until that date. It was held that this transaction amounted to the substitution of a new contract for that contained in the promissory note; that the period of limitation must be reckoned from 1st April, 1873; and that consequently, a suit to recover the balance due on the note instituted on 27th March, 1876, was not barred under schedule 2, clause 72 of Act IX of 1871.

O. S.
Holder of a pro-note payable on demand accepting interest in advance up to certain day on condition of not demanding up to that day, makes the transaction a new one.

74.—On a promissory note or bond payable by instalments.	Three years.	The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
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(No. 74, Act IX.)

75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Three years.	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
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(1) I. L. R., 1 Bom., 503.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

(a) (No. 75, Act IX.) The principle of waiver was applied by the Madras High Court in February, 1870, in the case reported at 5 Mad. H. C. Report, p. 198, and the principle was, for the first time, introduced in the corresponding Article of Act IX of 1871. The same provision has been reproduced with the addition of the words, “in respect of which there is no such waiver,” thus making it clear that waiver may be repeated.

C. H.
This clause does not apply to verbal contracts.

(b) In *Koylash Chunder Dass v. Boykoonto Nath Chundra*,⁽¹⁾ a debtor entered into a verbal contract with his creditor to pay a debt due in monthly instalments, the creditor reserving to himself the right to claim payment of the whole sum due on default of three successive instalments. The debtor failed to pay any instalment. Four years after the first instalment was due, the creditor sued the debtor to recover the sum due on the various instalments not barred by limitation. It was held, that the creditor was not bound to sue for the whole amount due directly on the debtor's failure to pay the three successive instalments. It was further held that this clause does not apply according to its strict terms to a suit brought upon a verbal contract. *Vide* last note under Article 57.

C. H.
Suit on an instalment bond entitling creditor to sue for the whole debt on first default or not to wait till expiry of term if he doubted his ability to realise debt, held to fall under Article 65 Act IX of 1871.

(c) In *Narain Babu v. Gouri Persad Bias*,⁽²⁾ bond provided for payment of interest monthly and principal within six months from the date of the bond and allowed the creditor that in default of payment of interest, or if he felt any doubt as to his being able to realize the debt, he was not bound to wait till the expiry of the term. It was held that the suit was not governed by Article 75 of Act IX of 1871.

Creditor may waive the benefit of the provision entitling

(d) In *Sri Raja Satracherla v. Sri Raja Setarama*,⁽³⁾

(1) I. L. R., 3 Calc., 619. | (2) I. L. R., 5 Calc., 21.

(3) I. L. R., 3 Mad., 61.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

loan-bond dated April, 1867, provided for repayment of Rs. 6,000, by eight equal yearly instalments of Rs. 750 each, the first to be paid on the 18th February, 1868. The first instalment was not paid on the due date, but was paid in May, 1868. Default was made in the 2nd, 3rd and 4th instalments. Eight months after the 4th instalment fell due, the defendant paid into the Collector's treasury Rs. 937 towards the bond amount, as the Collector was in charge of the plaintiff's estate as agent for the Court of Wards. The bond provided that in default of payment of any one of the instalments the sum then remaining unpaid should become due. It was held, that the creditor, though he can elect but once to enforce the alternative provision in the document, may waive the benefit of it not only on the first, but on any subsequent default.

him to recover entire debt not only on the first, but on any subsequent default.

(e) Where a bond for the payment of money by instalments contains a condition that on failure to pay any one instalment the whole sum then remaining due shall become payable, the creditor who seeks to recover instalments which in due course would have been due subsequent to the date on which the recovery of the debt in full has become barred, must prove a waiver of his right to enforce the condition. In this case plaintiff offered no evidence of anything by which a waiver could be proved, or from which it is to be inferred; all that appeared was that the creditor had remained inactive. Waiver is not to be inferred from a mere abstinence to enforce the remedy which accrued to the creditor on the default. *Gopala v. Paramma*,⁽¹⁾ *Sethu v. Nayana*.⁽²⁾

Waiver is not to be inferred from a mere abstinence, but from acceptance of payment after default.

(f) In the matter of *Cheni Bash Shaha v. Kadum Mundul*,⁽³⁾ it was held, that a waiver of the condition by which in default of payment of any one instalment, the

Acceptance of instalments after default operates as a waiver.

(1) I. L. R., 7 Mad., 583. | (2) I. L. R., 7 Mad., 577.

(3) I. L. R., 5 Calc., 97.

Description of suit.	Period of limitation.	Time from which period begins to run.
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<p>PART VI. Three years.</p>

whole amount unpaid became immediately payable, consists in the receipt of an instalment after due date instead of insisting on payment in full. But a creditor merely allowing the default to pass unnoticed, does not operate as a waiver.

A. H.
A waiver must be an intentional act with knowledge, and it is incumbent on any party insisting on a verbal agreement in substitution of a written contract, to show that both parties understood the terms of the substituted agreement (April, 1880.)

Decision of the Bombay High Court.
(January 1878.)

Subsequent payment will not defeat plaintiff's right to immediate payment of the whole debt.

Before Act IX of 1871, mere acceptance of

(g) In *Mumford v. Peal*,⁽¹⁾ it was held, that the mere acceptance by the obligee of a bond payable by instalments, of instalments after default, does not constitute a waiver within Article 75 of Act IX of 1871, and that limitation runs in such a case from the first default. Straight, J. observes: "On the contrary, I think that the most cogent and conclusive proof must be demanded to establish that a party to a contract has abandoned a right accruing to him under its provisions on breach, and has entered into some fresh parol arrangement condoning such breach and creating new relations with the party in default. A waiver must be an intentional act with knowledge, and it is incumbent on any party insisting on a verbal agreement in substitution of a written contract to show that both parties understood the terms of the substituted agreement. The *Earl of Darnley v. The London, Chatham and Dover Railway, Co.*" (L. J., 36 Eq., 404.) The Bombay High Court in *Gumna Dambershet v. Bhiku Hariba* and another,⁽²⁾ which was a suit instituted in October, 1871, upon an instalment bond, held in February, 1876, that the plaintiff's right to the immediate payment of the whole amount was not, under the note, subject to be defeated by any subsequent payment, and that no such subsequent payment (assuming it to have been made) could, in the absence of any fresh agreement, supersede or suspend such right.

(h) In *Hurronauth Roy v. Maheroollah Moollah*,⁽³⁾

(1) I. L. R., 2 All., 857. | (2) I. L. R., 1 Bom., 125.

(3) 7 W. R., 21.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

which was a suit brought upon an instalment-bond and not upon any fresh agreement between the parties, the period of limitation was held to run from the time when default was made in payment of the first instalment in consequence of which the whole amount became due. In *Ahmad Ali v. Hafiza Bibi*,⁽¹⁾ defendant, on the 24th May, 1866, gave plaintiff a bond payable by instalments, which provided that, if default were made in the payment of one instalment, the whole should be due. The first default was made on the 28th June, 1866. No payment was made after Act IX of 1871, schedule 2, No. 75 came into force. It was held in a suit upon such bond that limitation began to run when the first default was made, and that no waiver before Act IX of 1871 came into force could affect it.

an instalment subsequent to the default held not to help the plaintiff in any way.
(January 1887.)

(i) In *Ragho Govind Paranjpe v. Dipchand*,⁽²⁾ the bond sued on provided for the recovery of the whole debt on failure to pay any instalment. Default was made in the second instalment due in August, 1878, and the plaintiff sued for the whole debt. The Lower Court gave judgment for plaintiff for payment according to instalments. It was held in appeal that the obligee may waive the default under this Article, but the courts have no power to compel him to waive it. The stipulation that creditor may demand immediate payment of the whole debt in default of one instalment is not in the nature of a penalty, and that section 210 does not confer any authority on the courts to relieve a contracting party from such stipulation.

Agreement entitling creditor to demand the whole debt in default of one instalment is not a penal clause.

(j) In *Hanmantram Sadharam Pity v. Arthur Bowles*,⁽³⁾ bond dated 20th August, 1879, provided that in default of payment of any one instalment and of the

Court has no authority to relieve a contracting party from such stipulation.

(1) I. L. R., 3 All., 514. | (2) I. L. R., 4 Bom., 96.

(3) I. L. R., 8 Bom., 561.

Where the whole debt on default of one instalment is payable on demand, cause of action accrues from demand.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Birdwood, J., distinguishes this case from cases where payment of the whole debt on default of one instalment was not conditional on demand.

premium money when due, the defendant, if so required by the plaintiff, his executors, &c., shall pay the whole amount which may be due. The defendant paid three instalments, the last of which was paid on the 2nd December, 1879, for the instalment due on the 4th November, 1879. No further instalments were paid, and until the 30th January, 1884, the plaintiff made no demand for payment of the entire sum and filed the suit on the 28th April, 1884. It was held, that the suit was not barred as cause of action did not arise until the 30th January, 1884. It was held that, as the intention of the parties was that in case of default of payment of one instalment, the whole amount should become due only if a demand for such amount was made, cause of action did not arise until the date of demand. Birdwood, J., observes, "the words; if so required, &c.," give the plaintiff the option of either demanding payment of the whole amount on default being made in payment of one instalment, or of waiving the benefit of the provision which enables him to make the demand. In such a case, the mere forbearance to make a demand would amount to a waiver. It would, indeed, be a deliberate omission to realize the condition on which the whole amount became payable, and by such forbearance the plaintiff would deprive himself, so long as he continued it and had the right to do so, of the right to maintain an action for the whole amount. It would, of course, be otherwise if the whole amount of the bond had become payable, irrespective of any demand, as soon as default was made in the payment of any one instalment. In that case, although plaintiff would have the option of suing for the whole amount at once or of waiting, yet his forbearance to sue would not affect the defendant's liability to a suit from the time of the default. To such a case the words of Lord Denman, C. J., in *Hemp v. Garland* (quoted

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

in *Navalmal v. Dhondiba*, 11 Bom., H. C. Rep. at p. 158) would be applicable. 'If he (the plaintiff) chose to wait till all the instalment became due, no doubt, he might do so; but that which was optional on the part of the plaintiff would not affect the right of the defendant, who might well consider the action as accruing from the time the plaintiff had a right to maintain it.' In the case of an instalment bond providing for the payment of the whole debt, on default of payment of one instalment, the creditor receiving an instalment after its due date, instead of insisting on payment in full, would clearly be a waiver of the provision made for his benefit. (*Vide also Note F.*)

(k) This Article in effect creates a case of election as each instalment becomes overdue, and after the last instalment becomes overdue, there can be no election for the obvious reason that there are no two obligations to elect between. *Mackenzie v. Tiruvengadathan*.⁽¹⁾

(l) In *Ball v. Stowell*,⁽²⁾ B and S, executed a bond dated the 15th August, 1874, in favor of plaintiff in consideration of a loan of Rs. 15,000, agreeing to repay the same within three years from the above date and covenanting to pay every half-year interest on the same, at the rate of 8 per cent. per annum; and also to pay the premia on certain policies of insurance made over to plaintiff by way of collateral security. In the event of failure in payment on due date of interest and premia, the obligors made themselves liable to pay the full amount of the bond debt. The bond also contained the stipulation that it should be optional with the obligee to claim, and if necessary, to sue for the full amount of the bond on the failure of any one or more stipulated payment, or on the full expiry of the period of three years. It was

There can be no waiver after the last instalment becomes due.

Bond specifying day for repayment of principal, and entitling creditor to sue before or after term on failure to pay any instalment of interest or premium on policy, is not an instalment bond. Article 80 applies.

(1) I. L. R., 9 Mad., 271. | (2) I. L. R., 2 All., 322.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Limitation runs from failure of payment of both interest and premium and not on failure of payment of either.

held, that the bond was not an instalment bond under this Article. Spankie, J., observes, that Article 80 applies to the suit and that limitation would run from the date when the bond became due, and that according to the stipulation in the bond it would become due on failure in payment on date of both the interest and premia and not on failure of payment of either of them only.

Some decisions held that this Article does not apply to decrees directing payment by instalments and providing for payment of the whole sum on default of payment of any one instalment.

Observations of Westropp, C. J.

Decisions of B. H. & A. H.

Observations of Spankie and Duthoit, J. J.

(m) In *Dulsook Rattanchand v. Chugon Narrun*,⁽¹⁾ it was held that a decree payable by instalments with a proviso that in default of payment of any one instalment, the whole amount of the decree shall become payable at once, is barred, if application for execution be not made within three years from the date on which any one instalment fell due and was not paid. The payment of instalments subsequent to default in payment of the first instalment at the date specified, does not give the judgment-creditor a fresh starting point. Westropp, C. J., observes : " there is not in the last clause of Article 167 of schedule 2 of Act IX of 1871, which relates to decrees payable by instalments, any provision similar to that in Article 75 of the same schedule with respect to promissory notes or bonds payable by instalments ; where such notes or bonds provide that, if default be made in payment of one instalment, the whole shall be due, fixing that the period of limitation shall begin to run from the time of the first default, unless where the obligee waives the benefit of the provision, and then when fresh default is made. Nor does there appear to be in the new Limitation Act XV of 1877, schedule 2, Article 179, clause 6, relating to decrees payable by instalments, any such provision." In *Shib Dat v. Kalka Prasad*,⁽²⁾ it was held, that the holder of a decree for money payable by instal-

(1) I. L. R., 2 Bom., 356.

(2) I. L. R., 2 All., 444.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

ments was strictly bound by the terms of the decree. Spankie, J., observes that: "In my opinion, the decree holder was bound strictly by the terms of the decree. When the first default occurred, under the wording of the decree, he was bound to execute it in one lump. The instalment arrangement then ceased. If the decree holder chose to continue to receive instalments, he did so at his own risk." In *Ugrah Nath v. Laganmani*,⁽¹⁾ Duthoit, J., observes: "our sympathies are necessarily with the respondent, but we are of opinion that the appeal must prevail. The provisions of column 3, Article 75, schedule 2, Act XV of 1877, are not applicable to the circumstances of this case; for the claim is not on a promissory note or a bond, and it is an application, not a suit. Article 179, contains the law which must govern it."

Court expresses sympathy with decree holders losing debt from inapplicability of the Article.

(n) Several decrees holding that right to execute the whole decree on the first default may be waived so as to entitle decree-holder to enforce subsequent instalments falling due within three years, have been collected under the head instalment decrees, under Article 179.

Decisions to the contrary have been collected under Article 179.

76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years.	The date of the delivery to the payee.
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(a) (No. 76, Act IX.) Where, however, a note payable on demand was deposited with a banker for delivery to the payee on his producing another note cancelled, it was held that the payee had no ground of action till the note was delivered, and that therefore the statute ran only from that time. (*Savage v. Aldren*, 2 Stark, 232.)⁽²⁾ This Article 76 does not say that the promissory note must be one payable on demand.

(1) 1 L. R., 4 All., 83. | (2) Darby and Bonsanquet, p. 20.

Description of suit.	Period of limitation.	Time from which period begins to run.
77.—On a dishonoured foreign bill where protest has been made and notice given.	PART VI. Three years.	When the notice is given.
Inland Bill.	<p>(a) (No. 77, Act IX.) Sections 11 and 12 of Act XXVI of 1881, define an inland and foreign bill. Section 11: A promissory note, bill of exchange or cheque, drawn or made in British India, and made payable in, or drawn upon any person, resident in British India, shall be deemed to be an inland instrument. Section 12. Any such instrument not so drawn or made payable shall be deemed to be a foreign instrument. As to dishonor, notice and protest, see sections 91 to 99 of Act XXVI of 1881.</p> <p>(b) When a foreign bill has been dishonored, and duly protested, and notice given, the statute begins to run immediately notice is given, not from the time at which the bill would have become due. <i>Whitehead v. Walker</i>, 9 <i>M and W</i> 506.)⁽¹⁾</p>	
Foreign Bill.]		
English Law.		
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Three years.	The date of the refusal to accept.
According to English cases time runs from notice of non-acceptance.	<p>(a) (No. 78, Act IX.) According to English cases, time runs when notice of non-acceptance is given. "If a bill of exchange is dishonored, an action lies against the drawer at the suit of the payee immediately upon the latter giving notice of the non-acceptance." (<i>Milford v. Mayer</i>, 1 <i>Doug.</i> 55; <i>Hickling v. Hardy</i>, 7 <i>Taun.</i> 312.)⁽²⁾</p>	
79.—By the acceptor of an accommodation-bill against the drawer.	Three years.	When the acceptor pays the amount of the bill.
(No. 81, Act XI.)		

(1) *Darby and Bosanquet*, p. 23.(2) *Ibid.*

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Three years.	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	Three years.	When the surety pays the creditor.
82.—By a surety against a co-surety.	Three years.	When the surety pays anything in excess of his own share.

(a) (No. 80, Act IX.) In suits against Government, on Government promissory notes, limitation runs from the date on which the note becomes payable after notice given in the *Gazette* in accordance with the terms of the loan. (See Financial Notification, No. 59, dated the 11th January, 1882.)

Suits on Government promissory notes against Government.

(a) (Nos. 82, 83, Act IX.) Held, “that this Article should be construed as restricted to sureties who have paid the creditor and not as extending to sureties who have not paid the creditor, but have been compelled to pay contribution to a co-surety who has paid the creditor. Such a suit by a co-surety against the principal debtor would fall under Article 86. (*Madar Baksh v. Ahmed Ali*, (Punjab Rec. No. 98 of 1881.)(1)

Article 81 applies to a surety who has paid the creditor and not to a surety compelled to pay contribution to a co-surety.

(b) A surety, who had discharged the amount of a bill guaranteed by him, and another, as co-surety, sued his co-surety for contribution. It was held that the cause of action in the suit being the right to contribution, that right accrued, not when the bill in question was dishonored, but when the surety took it up and paid it. *Constantine v Drew*.(2)

Suit by surety against co-surety.

83.—Upon any other contract to indemnify. | Three years. | When the plaintiff is actually damaged.

(a) (No. 84, Act IX.) In *Pragi Lal v. Maxwell*,(3) plaintiff brought the suit on the 10th of October, 1882,

Case where defendant's claim of damages as a set off against the plaintiff's

(1) Rivaz's Limitation Act, p. 123. | (2) 1. N.-W. P. H. C. R., 100. (3) 1. L. R., 7 All., 284.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

claim was held to fall under this Article.

to recover the balance due to him from the defendants, for firewood supplied by the former, the bill for the said balance having been presented by the plaintiffs to the defendants on the 11th November, 1879. Defendants, who claimed a set off of damages incurred on and after the 25th October, 1879, were made parties on the 11th of January, 1883. Plaintiff objected to the set off claimed by the defendants, upon the ground that the damages were admittedly incurred on the 25th of October, and the claim for the same was actually made by the defendants on the 14th of January, 1883, or after three years from the date on which the defendants were actually damnified. The defendants pleaded the bar against a portion of the claim of the plaintiffs on the ground that the value of firewood became due on the several dates on which the firewood was supplied and that therefore Article 52 applied. It was held that the Article applicable to the defendants' set off was this, and the period of limitation ought to be calculated from the date on which the defendants were actually damnified to the date of the suit, although the defendants were made parties subsequently, and that therefore the set off was not statute barred.

Limitation calculated from the date of damage to the date of suit though defendants were made parties subsequently.

Plaintiff's right to indemnity against defendants, who, as last assignee were liable for rent and repair, held to accrue from the time that money was recovered from plaintiff.

(b) In *Pepin v. Chunder See Kur Mookerjee*,⁽¹⁾ lease of a house containing a covenant to repair was granted in 1864, to A, for a term of ten years. A died, and B, his administrator, assigned the lease to another, and it ultimately became vested in the plaintiff. In 1872, the plaintiff assigned the lease to the defendants, "under and subject to the covenants" therein contained. The defendants failed to repair, and after the term had expired, C, the representative of the lessor, sued B for

(1) I. L. R., 5 Calo., 811.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI. Three years.		

arrears of rent and damages for non-repair. *B* defended the suit, but *C* obtained a decree against him for Rs. 6,167-3-0 and costs, amounting in all to Rs. 8,328-3-0. His own costs amounted to Rs. 1,491-1-0. In 1876, *B* paid *C* Rs. 8328-3-0. In 1877, *B* sued the plaintiff for the amount which he had been compelled to pay *C*, and for the amount of his own costs. The plaintiff gave notice to the defendants to intervene and defend if they desired, but they did not reply, and the plaintiff consented to a decree for Rs. 6,932-12-11 with costs. Thereupon the plaintiff instituted the present suit to recover from the defendants the sum recovered from him by *B* together with his own costs of defence. It was held that the suit was not barred under this Article as the time when the plaintiff was actually damnified was when *B* recovered against him.

(c) On the 27th July, 1868, plaintiff received from defendant an indemnity bond, promising to indemnify plaintiff against the misbehaviour of a third person. On the 4th June, 1870, the third person committed an act of embezzlement. In an action brought by plaintiff on the 20th June, 1873 on the indemnity bond, the 1st court held the claim barred under clause 63 and 84, of schedule 2, Act IX of 1871. In appeal that decree was reversed, and the claim allowed under clause 95 of the same schedule. The High Court held that the suit was one not for relief on the ground of fraud, but for a breach of contract to indemnify against fraud and that it was governed by Articles 63 and 84 and not by 95 of Act IX of 1871. *Shapurji Jahangirji v. The Superintendent of The Poona City Jail.*⁽¹⁾

B. H. held suit for breach of contract to indemnify against the misbehaviour of a third person is a suit to indemnify against fraud and falls under corresponding Article 84 of Act IX of 1871.

84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as	Three years.	The date of the termination of the suit or business, or (where the attorney or vakil properly dis-
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(1) B. H. C. R., 12, p. 238.

Description of suit.	Period of limitation.	Time from which period begins to run.
to the time when such costs are to be paid.	PART VI. Three years.	continues the suit or business) the date of such discontinuance.

An Attorney improperly discontinuing business or suit has no cause of action for his costs.

(a) (No. 85, Act IX.) Where the business or suit is improperly discontinued, an attorney (or vakil) has no cause of action: (see *Nicholl's v. Wilson*, 11 M. and W., 106; *Thompson Act IX* of 1871.)

Suit brought in 1875, by solicitor engaged in July, 1871, to execute decree which was settled out of court in 1873, held not barred by Article 85 of Act IX of 1871.

(b) In *Hearn and others v. Bapu Saju Naikin*,⁽¹⁾ a solicitor was retained in July, 1871, to execute a decree. In November, 1871, a prohibitory order was made in the cause after which the solicitor did nothing more in the matter. In June, 1872, the decree-holder and judgment-debtor settled the matters in dispute between them without the knowledge of the solicitor, but this compromise was not made through, or certified to the court which passed the decree. In a suit brought in December, 1875, by the solicitor against the decree-holder to recover the amount of his bill of costs, it was held that the plaintiff's claim was not barred by Article 85 of schedule 2 of Act IX of 1871.

Attorney's application that his client should show cause why he should not pay bill of costs held not affected by limitation.

(c) In *Abba Haji Ishmail v. Abba Thara*,⁽²⁾ it was held that an application (under Rule 149 of the Common Law Rules of the Supreme Court of Bombay) by an attorney, that his client should show cause why he should not pay the balance shown by the Taxing Master's *Allocater*, to be due in respect of his bill of costs, and why, in default of such payment, attachment should not issue against the person and property of the client, is not "a suit" within the meaning of the Limitation Act IX of 1871. It was held that such an application is not barred by any law of limitation now in force in British India.

Would Article 178 apply?

NOTE.—Would Article 178, which was not in Act IX of 1871, apply to such applications?

(1) I. L. R., 1 Bom., 505 | (2) I. L. R., 1 Bom., 253.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

(d) In *Narayana v. Champion*,⁽¹⁾ plaintiff, as solicitor, claimed the costs due to him as taxed by the Registrar of the High Court. The appeal decree in which costs were taxed was dated 5th January, 1878. On the 22nd February, 1878, the solicitor received the usual notice that a day had been fixed for taxing costs. The plaintiff's solicitor having informed his client of the affair, received instructions not to appear on taxation. The solicitor filed his suit on the 22nd February, 1881. It was held, that until the costs were taxed and inserted in the decree and the decree had issued, the suit had not terminated.

Suit does not terminate until decree is issued with costs taxed.

(e) In *Balkrishna Pandurang v. Govind Shivaji*,⁽²⁾ which was a suit brought by a vakeel against his client for fee, the question was whether termination of a suit means its decision or any event after decision. It was held that termination of a suit is when judgment is given in the court in which the action is commenced: *per* Blackburn, J., in *Harris v. Quine* (L. R. 4, Q. B. 658), and that the suit was barred under this Article as it was brought 3 years after the termination thus defined.

B. H. held termination of a suit is decision given in the court in which the suit is commenced.

85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years.	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
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(a) (No. 87, Act IX; section 8, Act XIV.) The corresponding provision of section 8 of Act XIV of 1859 was applicable to suits for the balances of accounts current between merchants and traders who have had mutual dealings, and provided for the running of time from the close of the year in which the last item is entered.

This Article applies to mutual accounts between any two persons.

(1) L. L. R., 7 Mad., 1. | (2) I. L. R., 7 Bom., 518.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Under Article 87 of Act IX of 1871, limitation commenced from the date of the last item admitted or proved in the accounts. This Article (85 of the Act 1877) provides for the application of its provisions to mutual accounts between any two persons, and makes the limitation to run as under Act XIV of 1859 from the close of the year in which the last item admitted or proved is entered in the account.

What constitutes mutual dealings as per Peacock, C. J.

(b) In *Ghaseeram v. Monohor Doss*,⁽¹⁾ which was a case governed by Act XIV of 1859, the plaintiff used to send hundies and treasury drafts from Puttella to the defendant at Calcutta, to put him in funds to meet the purchase of goods in plaintiff's behalf, and hundies drawn by the plaintiff on the defendant, and the suit was for balance of accounts current. Phear, J., held that this did not constitute mutual dealing. Peacock, C. J., in his judgment said that, "if there were such dealings between the plaintiff and the other firm in the course of business, that sometimes the balance was in favour of one party and sometimes of the other, the dealings were mutual within the meaning of the sections."

A continuous account between principle and agent with debits and credits on each side of it, was held to fall within section 8, Act XIV of 1859.

(c) In *Alexander Watson v. Aga Mehedes Sherazee*⁽²⁾ an agreement between a principal and his agent commenced with an admitted balance, and clearly contemplated the existence of an account current containing mutual items of debit and credit. The agreement contained a stipulation that on the adjustment of the accounts, the principal should be bound to pay such balance as might be found due from him. The account was kept accordingly as a continuous account, and contained several items which brought down the mutual dealings to March, 1868. The agent sued in February,

(1) 2 Ind. Jur., N. S., 241. | (2) L. R., 1 Ind. App., 346.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

1871, to recover the balance due to him on the account. It was held that the case fell within the 8th section of Act XIV of 1859, and was not barred by limitation, even as to the items which were dated more than three years before the institution of the suit.

Suit not barred even as to items dated more than three years before suit.

(d) Following the above decision, Sargent, J., in *Narrandas Hemraj v. Vissandas Hemraj*⁽¹⁾ observes, that this clause would apply only to those cases in which both parties have, in the course of their dealings, made *actual* demands on one another. The more reasonable and the more probable intention of the framers of the clause appears to have been, that it should apply to cases where the course of business has been of such a nature as to give rise to reciprocal demands between the parties; in other words where the dealings between the parties are such that sometimes the balance may be in favor of one party and sometimes of the other. In *Laljee Sahoo v. Rughoo Nundun Lallsahoo*⁽²⁾ Garth, C. J., observes, "that Article (85) as it seems to us, is intended to apply to cases where an account has been going on between two parties, and balances have been struck from time to time, showing the amount due from one of such parties to the other, and the suit to which that Article is intended to apply is a suit brought by one of those parties against the other, for the balance found to be due to him on that account." In *Kushalo v. Behari Lal*,⁽³⁾ Oldfield, J., observes: "The nature of the transactions between plaintiffs and Gulzari Lal were such that sometimes a balance was in favour of plaintiffs and sometimes of Gulzari Lal, and we are disposed to hold that Article 85, schedule 2 of the Limitation Act would apply, and the limitation for the recovery of the debt would run from the close of the year

Sargent, J., observes that framers of this clause intended its application to cases where the course of business was such as to give rise to reciprocal demands between parties.

Observations of Garth, C. J.

Observations of Oldfield, J.

(1) I. L. R., 6 Bom., 134. | (2) I. L. R., 6 Calo., 447.

(3) I. L. R., 3 All., 523.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

in which the last item admitted or proved is entered in the account."

Depositing money with a banker and usually over-drawing it, and sometimes paying in excess of liability do not constitute mutual, open and current account.

(e) In *Hajee Syud Mahomed v. Mussamut Ashruf-oonnissa*,⁽¹⁾ the manager of *A*, the proprietress of an indigo factory, on the 20th December, 1869, paid into the *kothi* or bank of *B*, a banker, the sum of Rs. 1,200 to the credit of *A*, and from that time onwards sums of money were drawn by *A*'s manager out of *B*'s bank, and applied to the purposes of *A*'s factory; the balance, though generally against *A*, fluctuated, *A*'s account being usually over-drawn, but there being sometimes a balance in her favour, created by payments made on her account into *B*'s bank. The 2nd of July, 1872, was the last occasion that any balance was due from *B* to *A*. Payments continued to be made on behalf of *A* into *B*'s bank up to the 12th of June, 1873, when a sum of Rs. 1,083-8-0 was paid into her account, but, notwithstanding this payment, the balance of account was on the date against her. After the 12th of June, 1873, *B* continued to make payments on behalf of *A*, and also to render monthly accounts in which he charged *A* with such payments, and also with the principal of, and interest upon, the balance due on previously rendered accounts. This continued till the month of January, 1874, when *B*, for the last time rendered a monthly account to *A*, the last item in which was a payment made on the 6th January, 1874. On the 23rd December, 1876, *B* instituted a suit against *A*, to recover the balance of principal and interest due to him on the footing of the last account rendered by him to *A*. It was held, that the account between *A* and *B* was not, and never had been, a mutual, open, and current account, and that the suit was therefore barred by limitation; and that the payments

(1) I. L. R., 5 Calc., 759.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

made by *B*, on behalf of *A*, within the period of limitation, even if authorized, did not have the effect of keeping alive his previous claim against her. It was further held that even if the dealings and transactions between *A* and *B* could be so construed as to show that there had been at any time a mutual, open, and current account between them, that mutual relation terminated on the 2nd July, 1872, or if not then, on the 12th June, 1873, when the last payment was made on *A*'s account into *B*'s bank. Pontifex, J. observes: "In order to bring the case within Article 87 of Act IX of 1871 and to prevent limitation, the plaintiff would have to show that there was a mutual, open and current account between the parties in which there were reciprocal demands. Now I must say that I should have considerable hesitation in holding that there was ever between these parties a mutual account, although, in the instances which I have mentioned, the defendant had in fact paid monies into plaintiff's bank which were in excess of his liabilities; for I do not think that the defendant could at any time have said—'I have an account against you, the banker.' During nearly the whole of that time, the banker could have said, 'I have an account against you, the defendant;' but unless they could each have said to the other. 'I have an account against you,' I do not see how these could be 'mutual' accounts." "But besides the account being mutual, open and current, there must, to bring it within clause 87, have been reciprocal demands between the parties." "Under Article 87, the time within which the plaintiff must sue is 'the time of the last item admitted or proved in the account.' According to my reading of the Article, the word 'item' means the last admitted "item on the defendant's side of the account, or, in other words, the last reciprocal item."

Observations of
Pontifex, J.

Item means the "last" admitted item on the defendant's side of the account or the last reciprocal item.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI. Three years.		
<p>Money lent on one side and money paid on account on the other with balance always in favour of the first, do not constitute reciprocal demands.</p>	<p>(f) In <i>Normul v. Pookermul</i>, decided on the 19th August, 1879, and reported in the <i>Englishman</i> of the 26th of that month, Justice Wilson held that there should be on each side, matters which, if there were no running account, would form a cause of action. Money lent on one side, and money paid on account on the other, with the balance always in favour of the first, do not constituted reciprocal demands.⁽¹⁾</p>	
<p>86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.</p>	<p>Three years.</p>	<p>When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person.</p>
<p>Provision of the Act of 1850 was held to apply in the absence of a custom allowing a certain time of grace.</p>	<p>(a) (No. 88, of Act IX.) A suit for the recovery of the amount due on a Policy of Marine Insurance falls under clause 10 of section 1 of the Limitation Act. In such cases, the limitation (in the absence of a custom allowing a certain time of grace) begins to run from the date when the defendant has notice of the loss and refuses, or neglects, to pay. <i>Norotamdas Bhagtan Das v. Dayabhai Ichhachand</i>.⁽²⁾</p>	
<p>87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.</p>	<p>Three years.</p>	<p>When the insurers elect to avoid the policy.</p>
(No. 89, Act IX).		
<p>88.—Against a factor for an account.</p>	<p>Three years.</p>	<p>When the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates.</p>

(1) *Mitra's Limitation Act*, 586.

(2) 6 B. H. C. R., A. C., 34.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

(a) (No. 64, Act IX.) A factor is an agent employed to sell goods or merchandise consigned or delivered to him by, or for his principal, for a compensation commonly called factorage or commission. He may buy and sell in his own name. He is also entrusted with the possession, management, control and disposal of the goods, and has a special property in, and a lien, on them.—*Wharton*. During the continuance of the agency, the right to sue accrues on demand and refusal.

Who is a factor?

During continuance of agency, right to sue accrues on demand and refusal.

(b) But if the agent dies, the suit against his representative must be brought within three years from the date of death, provided no demand had been made during his lifetime. Plaintiff's case will be protected by section 17, if there is no legal representative of the deceased against whom a suit may be instituted. *Lawless v. Calcutta Landing Company*.⁽¹⁾ In *Kalee Kishen Paul Chowdhry v. Mussamut Juggut Tara*,⁽²⁾ which was a suit against the heirs of a deceased Gumastah on the allegation that the gumastah had overdrawn a sum of money from the funds of three guddees under his charge, at various dates from his appointment in 1265, to the date of his death, it was held, that the cause of action accrued not from the time when the agent drew the money, but from the time of his death.

If agent dies, time runs from the date of death if no demand had been made during his lifetime. (August, 1881.)

89.—By a principal against his agent for moveable property received by the latter and not accounted for.

Three years.

When the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates.

(a) (No. 90, Act IX.) In *Kally Churn Shaw v. Dukhee Bibee*,⁽³⁾ plaintiffs who were of Hulwall caste, sued their mother in 1879, to recover possession of the properties left by their father who died in 1857. In

Son's suit for father's moveable property managed by widowed mother, falls under this Article or Article 90. (Dec. 1879.)

(1) I. L. R., 7 Calc., 632.

(2) 11 W. R., 76.

(3) I. L. R., 5 Calc., 692.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

1865, the plaintiff's mother sued the plaintiffs and another widow of her husband who had possession of the property, alleging that the deceased had left a will. The suit was compromised, by which the plaintiff's mother was to manage the property. It was held, that the suit as to immoveable property fell under Article 144, and as to moveable property, it fell under this Article or Article 90.

If agent promises to render account at a future date and does not, limitation runs from that date.

(b) Where the agent, on the demand of the principal, promises to render accounts on a future date, but does not, limitation will, it has been held, run from that date, and that is the date when he virtually refuses to render accounts. *Hori v. The Administrator-General*.⁽¹⁾

C. H.
Suit against agent employed in the management of land or collection of rents, &c., except in cases of fraud, is governed by the one year's rule under section 30, Act VIII of 1869, B. C.

(c) A suit against an agent employed in the management of land or collection of rents, for money received or accounts kept in the course of such employment, or for papers in his possession, is (except in cases of fraud) governed by the one year's rule under section 30, Act VIII of 1869, B. C., and section 24, Act X of 1859. (See I. L. R., 4 Calcutta, 550; 3 C. L. R., 258, 440, 444; 8 C. L. R., 285.) If such an agent delivers an account showing himself to be indebted, a fresh cause of action arises upon the admission by the settlement of account. An action for the balance on the account will be governed by the general law of limitation. Article 64, or some other Article will apply. (See 2 Hay, 509; 20 W. R., 309; 22 W. R., 338.) Suits against agents are not specially provided for in the Bengal Tenancy Act, 1885.⁽²⁾

Bengal Tenancy Act of 1885 does not specially provide for suits against agents.

90.—Other suits by principals against agents for neglect or misconduct.	Three years.	When the neglect or misconduct becomes known to the plaintiff.
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(a) (No. 89, Act IX.) This Article governs a suit for damages against an agent in respect of the loss arising from his misconduct in neglecting to sue for debts due to

(1) 3 C. L. R., 446. | (2) Mitra's Limitation Act, p. 589.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

his principal, or in so negligently selling his principal's property that the proceeds cannot be realized. (See *Baboo Lal v Vaughan*, 2 Agra, 306.)⁽¹⁾

91.—To cancel or set aside an instrument not otherwise provided for.	Three years..	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
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(a) (No. 92, Act IX.) As to the application of this Article to suits in which the only relief sought is the setting aside of an instrument, and also to suits in which the plaintiff sues for possession of property by setting aside an instrument said to be fictitious or invalid, there has been some difference of opinion.

There is some difference of opinion as to the application of this Article.

(b) *Hazari Lal v. Jadaun Singh*⁽²⁾ plaintiff sued for possession of certain immoveable property, by avoidance of a spurious deed of gift executed by one N deceased, in favour of the defendant. Straight, J., was of opinion that the suit was governed by Article 144 and not by 91. He observes: "After giving the point the best consideration I can, I do not think that it is. In my opinion, Article 91 is intended to apply to suits of the kind mentioned in section 39 of the Specific Relief Act, and to cases where a plaintiff seeks to have cancelled or set aside some instrument he has been induced by misrepresentation, concealment of facts, or other means of a like kind to enter into, or where the cancelment or setting aside of an instrument is the only relief asked, as an example of which latter kind of suit I may refer to a case reported in I. L. R., 3, All., 395." Stuart, C. J., was of opinion that the suit was governed by Article 91 and not by Article 144, and distinguished this case from *Sikher Chund v. Dulputty* (1) *Mitra's Limitation Act*, p. 589. | (2) I. L. R., 5 All., 76.

A. H. Asper Straight, J. This Article applies only to suits of the kind named in section 39 of the Specific Relief Act when the cancelment of an instrument is the only relief asked for, and not to a suit which seeks for possession by avoidance of a deed of gift. (August 1882.)

Stuart, C.J., was of opinion that the suit was governed by Article 91 and not by 144.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

C. H. held that a suit to recover property sold by a guardian is not a suit to cancel an instrument not otherwise provided for, falling under Article 92, but is governed by Article 144. (August 1879.)

Singh⁽¹⁾ in which it was held, that on the facts, the suit must be regarded as one for possession of immoveable property under No. 145 of the Act of 1871, corresponding to No. 144 of the present Act, and not merely for setting aside an instrument within the meaning of No. 92 of the former Act corresponding with No. 91 of the present. A Hindu family being heavily oppressed with debts, ancestral and otherwise, the two elder brothers of the family, for themselves, and as guardians of their minor brother, applied under section 18 of Act XL of 1858, and obtained from the District Judge an order for the sale of several portions of the ancestral estate, and sold the same under registered deeds signed by the Judge. Within twelve years after the registration, the adopted son of the minor brother brought several suits against the purchasers to set aside the sales and recover back his share of the property, alleging that his two elder brothers had made the sales fraudulently and illegally to satisfy personal debts of their own, and the court (Garth, C. J. and Prinsep, J.,) held that the suit was in substance one for the possession of immoveable property.

A. H. Suit for possession by setting aside a mortgage deed was held not to fall under this Article. (Feb. 1883.)

A. H. So was a suit for possession by avoidance of a mortgage by conditional sale. (March 1883.)

(C) The above decision of Straight, J., was followed in *Sobha Pandey v. Sahodra Bibi*,⁽²⁾ in which the plaintiff prayed, that setting aside the mortgage deed set up by defendant No. 1, the land be protected from the illegal foreclosure, by cancelment of the foreclosure proceedings. In *Ramausar Pandey Raghubar Jati*,⁽³⁾ the plaintiff sued to set aside a mortgage by conditional sale of certain immoveable property belonging to him, made on his behalf during his minority, and for possession of the property. It was held that the suit was one described in No. 142 and not in No. 91.

(1) I. L. R., 5 Calc., 363. | (2) I. L. R., 5 All., 322.

(3) I. L. R., 5 All., 490.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
Three years.		

(d) In *T. Sivithri Andarjanom v. M. Vasudevan Nambudripad*,⁽¹⁾ "The Subordinate Judge also considered that the suit was barred by the Law of Limitation as it was a suit to set aside a document, and the provisions 91 to 93 and 95 of the Limitation Act applied, and, under the circumstances proved, allowed plaintiff only three years from the date of the instrument. The District Judge was of opinion in regard to this point that the suit being substantially a suit to recover the property, consisting of land, the period was 12 years and that the suit was not barred, but upon the other grounds he held that plaintiff's suit was rightly dismissed." The High Court have not interfered with the decision of the District Judge on the question of limitation.

M. H.
Would also appear to be of opinion that in a suit for possession by avoiding an instrument, the latter relief is an incidental question.
(June 1881.)

(e) Peacock, C. J., observes: "We are of opinion that the cause of action, if any, accrued when possession of the land was taken by the purchaser. Suppose a person not having any title to the land were to mortgage it, the owner of the land would not be bound to bring an action directly the mortgage deed was executed. Or suppose the mortgagee were to go on to foreclose the land and not to make the owner of the land a party, he would not be bound to come in, nor would he be affected by the decree in that suit. He might very reasonably say: 'Why should I be obliged to incur the costs and embarrassment of a suit when the property remains in my possession? It will be time enough for me to interfere when my possession is interfered with.' That appears to be the true view of the matter. His action accrued, so far as the right to set aside the deed is concerned. The parties were not bound to sue to set aside the deed. They might

Observations of Peacock, C. J., on the right of a party to seek for the cancellation of an instrument.

Right to set aside a decree is distinct from the right to recover possession.
(June 1887.)

Cause of action for possession accrues when plaintiff's possession is interfered with. Plaintiff is not bound to sue to set aside a deed, though he might, when evidence was forthcoming.

(1) I. L.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

suit if they had pleased to do so that they might have the validity of it tried at once when witnesses were forthcoming to prove that there was no sufficient cause for the mortgage. The right to set aside the deed is a distinct right from the right to recover possession." *Raja Ram Tewary v. Luchmun Pershad.*⁽¹⁾

A. H.
Purchaser's
suit for possession by avoidance of mortgage is governed not by this Article or 95, but by Art. 138. (August 1883.)

(f) In *Uma Shankar v. Kalka Prasad*,⁽²⁾ the purchasers of property sold in execution of a decree having been resisted in obtaining possession of the property by a person claiming under a mortgage from the judgment-debtor, sued for possession, by avoidance of the mortgage, alleging that the same was collusive and fraudulent. The plaintiffs did not ask for the cancellation or setting aside of the instrument of mortgage. It was held that the law of limitation governing the suit was not Article 91 or 95 of the Limitation Act, but Article 138. This view of the law is supported by the decision of the Privy Council in *Raj Bahadur Sing v. Achambit Lal*.⁽³⁾ This decision was followed in *Ikram Singh v. Intizam Ali*,⁽⁴⁾ in which purchaser at a sale in execution of a decree sued for possession of the land cancelling an instrument of usufructuary mortgage which was alleged to have been fraudulently got up. It was held that the declaration of the invalidity of the defendant's pretensions was no more than an incidental step in the assertion of the plaintiffs' title and right to possession, and that the limitation of 12 years was applicable to the suit.

Purchaser's
suit for possession cancelling a usufructuary mortgage deed.

This Article applies to third parties' suits to cancel instrument. (June 1881.)

(g) In *Bhawani Prasad Singh v. Bisheshar Prasad Misra*,⁽⁵⁾ plaintiffs, three in number, sued for possession of certain land by cancelment of a lease or *Istimrari Patta*, dated 8th June, 1876, granted by one of the defendants,

(1) 8 W. R., 15.

(2) I. L. R., 6 All., 75.

(3) L. R., 6 I. A., 110.

(4) I. L. R., 6 All., 261.

(5) I. L. R., 3 All., 846.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

who was a widow of the plaintiff's cousin. The lessee's defence was that the lease was executed with the knowledge of one of the plaintiffs, who caused it to be attested and registered, and that the other two adopting the lease allowed him to take possession of the land and accepted payment of rent. The Lower Appellate Court allowed the plaintiff's claim on the ground that the lessee knew that the lessor was not competent to grant the lease. It was held that the suit was governed by this Article, which barred the claim of one of the plaintiffs who had been aware of the existence of the lease for more than three years on the date of the suit and remanded the case, framing proper issues between the remaining two plaintiffs and the lessee. It was further held that Article 114 refers to the rescission of contracts as between promisor and promisee and not to suits by third parties to have an instrument cancelled or set aside.

Article 114 applies to a suit between promisor and promisee and not to suit by third party to cancel instrument.

(h) One of the heirs of a deceased Mahomedan sued for her share under the Mahomedan Law, of the estate of the deceased, setting aside a gift made by him by reason of possession not having been transferred to the donee. The Lower Appellate Court rejected the suit as barred as it was not brought within three years from the date of the gift. It was held by a Full Bench that the plaintiff's title to impeach the gift could only accrue from the moment when by receipt of possession the gift had become operative in law, and that it does not necessarily follow that, because the alleged deed of gift was given on a particular date the time at once began to run against the plaintiff under this Article. *Meda Bibi v. Imaman Bibi*.⁽¹⁾

A. H. N. B.
Cause of action to sue for cancellation of a deed of gift made by a Mahomedan, accrues when gift becomes valid by possession. (Feb. 1894.)

(i) In *Tawangar Ali v. Kura Mal*,⁽²⁾ plaintiff sued

A. H.
Construed this Article to mean, when having

(1) I. L. R., 6 All., 207. | (2) I. L. R., 3 All., 394.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

knowledge of such facts, a cause of action accrued to plaintiff, and he was in a position to sue; and held that suit to realise decree amount by setting aside a fraudulent sale deed of property granted by debtor to the defendant, falls under this Article. (January 1881.)

on a simple mortgage deed on the 22nd November, 1875, and on the 25th, hearing that the debtor was about to sell a portion of his property, caused a notice to be served on him on the 29th November, 1875, under section 8 of Act VIII of 1859, but on the 1st December debtor sold his property to the defendant. The plaintiff's suit on his bond against the debtor was rejected by both the Lower Courts, but was decreed on appeal on the 7th August, 1876. The plaintiff after selling a portion of the debtor's property, had yet to recover a balance, and to recover it by voiding the sale deed of 1st December, 1875, on the ground of fraud, brought this suit on the 1st of July, 1879. It was held, that the words "when the facts entitling the plaintiff, &c," must be construed to mean, when, having knowledge of such facts, a cause of action has accrued to plaintiff, and he is in a position to maintain a suit and that until the result was known of the former sale in execution of the decree of court, it is difficult to see what *locus standi* the plaintiff could have had in any court to ask to have the deed of sale set aside, and that cause of action accrued to him when, having knowledge of the fraudulent character of the sale deed, it had become apparent to him that there was no other property than that covered by the sale deed available for the debt, and the suit was within time.

Cause of action accrued when plaintiff knew that debtor had no other property than that covered by the sale deed.

92.—To declare the forgery of an instrument issued or registered.	Three years.	When the issue or registration becomes known to the plaintiff.
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(a) (No. 93, Act IX.) Under Act IX, the date of the issue or registration was the starting point of limitation. Under the present Act, limitation does not run until the issue or registration becomes known to the plaintiff.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

(b) Where plaintiff and defendant were the widows of two joint uterine brothers, and defendant alleged that plaintiff's husband had left his share by will to her (defendant's) husband, it was held that in a suit by plaintiff, alleging the will to be a forgery, and praying for a declaration of her right to her husband's share, that the substance of the suit being for such declaration of right and not to set aside the will, the limitation prescribed in this Article did not govern the case. *Nistariny Dossee v. Anundmoye Dossee*.⁽¹⁾ So where, on the death of A, his property was taken possession of by O under an alleged deed of sale from A; it was held, that a suit by A's heir for possession and to set aside the deed was governed by Act IX of 1871, schedule 2, Article 145, (144 of this Act,) and not by Article 93. *Trilochun v. Nobokishore Gut-tuck*.⁽²⁾

C. H. Plaintiff's suit alleging her husband's will to be forgery and praying for declaration of her right to her husband's share, does not fall under this Article. So is a suit for possession and to set aside a sale deed.

93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years.	The date of the attempt.
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(a) This Article and Article 92 correspond to Article 93 of Act IX of 1871, except that, by the latter, the date of issue or registration or attempt was the time from which the period was to run. Where no fraud is alleged, the three years' limitation in this Article will run from any attempt to enforce the instrument, although that attempt might not have been known to the person who brings the suit to declare it a forgery.

Knowledge of attempt is not necessary.

(b) *Fakharuddin Mahomed Ahsan v. The Official Trustee of Bengal*,⁽³⁾ was instituted by a Mahomedan wife against her husband for dower and was appealed to the High Court and then to the Privy Council. Pending

Setting up a deed in a suit and applying to be made respondent constituted an attempt to enforce.

(1) 2 Calc. L. R., 561.

(2) 2 Calc. L. R., 10.

(3) 1 L. R., 8 Calc., 178.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

It is not necessary that the party seeking to be benefited by the forged instrument should seek to obtain the entire fruits of it. It is enough if he seeks to place himself in an advantageous position.

the appeal to the High Court, the wife executed a hibbanamah, giving to the present defendant a share in whatever she should recover. She died while the appeal was pending, and the defendant, on the basis of the deed, applied in 1865 to have his name put upon the record as one of the respondents. The present plaintiff opposed the application on the ground that the deed was a forgery. The defendant's name was put on the record on the ground that it would not prejudice the plaintiff. After the disposal of the suit by the Privy Council in December, 1873, the plaintiff sued to have it declared that the sale deed was a forgery. Jackson J., observes: "It seems to me it clearly was such an attempt to enforce the instrument as under Article 93 obliged plaintiff to bring his suit within three years of such attempt. It is not necessary for the purposes of that Article that the person who is to profit by that instrument should seek to obtain the entire fruits of it. It is quite enough in my opinion, if, having obtained the instrument, he seeks to place himself in an advantageous position, which, but for the instrument he could not occupy."

94.—For property which the plaintiff has conveyed while insane.	Three years.	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
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(No. 94, Act IX.)

95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Three years.	When the fraud becomes known to the party wronged.
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Where right to sue is founded on a document fraudulently

(a) This Article re-enacts as one Article the provisions contained in Articles 95 and 96 of Act IX of 1871.

Where the right to sue, or the title upon which it is

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI. Three years.		

founded, or any document necessary to establish such right, has been fraudulently concealed by the defendant, section 18 applies. In *Opender Narain Mookerjee v. Gudadhur Dey*⁽¹⁾ it has been observed that Article 95, schedule 2, of the Limitation Law provides a period of limitation in extension of the period which, in the absence of fraudulent concealment, would, under some other Article, apply to a suit and not a period less than that which under ordinary circumstances would be allowed for a suit of the same nature. This Article does not apply to a suit for possession of immoveable property cancelling an instrument of mortgage set up by the defendant and which the plaintiff alleged was fraudulent and collusive. Such suits are governed by Article 138. *Uma Shankar v. Kalka Prasad*.⁽²⁾

concealed, section 18 applies.

This Article does not apply to suit for possession by avoiding a mortgage deed.

(b) In *Chunder Nath Chowdhry, v. Thirthanund Thakoor*,⁽³⁾ the plaintiff's grand-father's brother's widow had granted a *patni* lease in May, 1862, to the 1st and 2nd defendants' father of a certain joint property, and the plaintiff's father obtained in August, 1867, a decree declaring that the lease should enure only during the life of the widow. In execution of a money decree against the plaintiff's father, the 1st defendant purchased the reversionary right. The widow survived the plaintiff's father and died in February 1869. The defendant's father, who held possession of the property, having made default in payment of revenue, the Government sold the lands, and the 3rd defendant, a cousin of the other defendants, bought it. The plaintiff alleging that the default was fraudulent, sued to recover possession of the property. The Lower Court rejected the suit as barred by this section, the suit not having been brought within three years of the

This does not apply to suit for land when fraud is merely a part of the machinery by which plaintiff is kept out of possession, but applies to one desiring to be relieved from a transaction into which he was fraudulently induced to enter.

(1) 25 W. R., 476.

(2) I. L. R., 6 All., 75.

(3) I L. R., 3 Cal., 504.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Legislature could not have intended to cut down 12 years which plaintiff would ordinarily have to three years because in addition to wrongful possession there is fraud.

Suit to recover value of cattle which defendant received fraudulently representing he was plaintiff's creditor's agent, falls under this Article.

To a suit for money fraudulently realized by decree-holder after he had transferred it, runs from discovery of fraud.

Suit for breach of contract to indemnify against the fraud of a third party is not governed by this Article.

discovery of the alleged fraud. It was held that this Article was not intended to apply to suits for possession of immoveable property when fraud is merely a part of the machinery by which the defendant has kept the plaintiff out of possession, and that the Article has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequences of such act. Jackson, J., observes, that it could not have been the intention of the Legislature to cut down the limitation of 12 years which the plaintiff would ordinarily have to three years, because, in addition to wrongful possession on the part of the defendant, there had been a fraud.

(c) The plaintiff alleged that the defendants, fraudulently representing themselves to be agents of one S., received from him cattles in payment of a debt which he owed to S, and that they, instead of giving the cattle to S., appropriated them, in consequence of which he was compelled by suit to pay the debt a second time. It was held that a suit by plaintiff to recover the value of the cattle came under this Article. *Budha Singh v. Hira* (Punj. Rec., No. 19 of 1878.)⁽¹⁾

(d) Where A sold a decree to B, but after the sale realized the decree amount from the judgment-debtor, and on application by B for execution the fraud was discovered, it was held in a suit by B for the recovery from A of the purchase money, that limitation ran from the discovery of the fraud. *Gopal Chandra Dey v. Pemu Bibi*.⁽²⁾

(e) Plaintiff received from defendant an indemnity bond, promising to indemnify plaintiff against the misbehaviour of a third person. The third person committed

(1) Rivas's Limitation Act, p. 131. | (2) 1 B. L. R. A. C., 76.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

an act of embezzlement. In an action brought by plaintiff on the indemnity bond more than three years after the date of the embezzlement, it was held that the Articles of Act IX of 1871, corresponding to Articles 65 and 83 of this Act, barred the suit, and that Article 95 was not applicable: *Shapurji Jahangirji v. Superintendent, Poona City Jail.*⁽¹⁾

(f) *Natha Singh v. Jodha Singh*,⁽²⁾ was a suit brought by plaintiffs to set aside the sale effected in execution of a decree which had been fraudulently obtained by the defendant who sued on a mortgage deed which had been cancelled by being included in a subsequent mortgage deed executed to him by the plaintiff's ancestor and to recover possession of the property. It was held, that Article 95 alone was applicable to this case, inasmuch as fraud vitiates all things and prevents the application of any other law of limitation than that specially provided for relief from its consequences, and that the knowledge predicated by the terms of this Article is not mere suspicion, but such definite knowledge as enables the person defrauded to seek his remedy in court. It was further held, that Article 12 or 144 does not apply to this case. (See *Notes H. and O.* under Article 12, pp. 305, 309.)

Suit to cancel court sale on the mere ground of fraud, falls under this Article and not under Articles 12 or 144.
(May 1894.)

Knowledge predicated by this Article is not mere suspicion but definite knowledge.

(g) In *Viraragava v. Krishnasami*,⁽³⁾ a mortgagee sued the mortgagor in 1876, upon a deed dated December, 1869, and in execution of that decree himself became purchaser in August, 1876; afterwards he discovered that a part of the land had been acquired by the Railway Company under the Land Acquisition Act in 1874, and that the compensation money claimed by the mortgagor's mother, who sold it to the Company, was lodged in the Treasury in her name. Purchaser's application for money

To auction purchaser's suit for compensation awarded to mortgagor under Land Acquisition Act, time runs from date of knowledge.

(1) 12 B. H. C. R., 238.

(2) I. L. R., 6 All., 406.

(3) I. L. R., 6 Mad., 344.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Claim is not barred either under this Article or Article 96.

to the court in February, 1880, was rejected, and he brought a regular suit in September, 1880. It was held, that the suit was not barred by limitation as the compensation was awarded to mortgagor's mother either through fraud on her part, or mistake on the part of the Collector; and as the auction purchaser did not become aware of the fraud or mistake until within six years before the suit, his claim either under this Article or Article 96 is not barred.

Trustee's suit to set aside for fraud, decree obtained by other trustees falls under this Article.

(h) Certain of the grantees of lands, granted for the maintenance of the grantees and the support of a mosque and other religious purposes, sued for the removal of the superintendent of the property from his office. The parties to this suit entered into a compromise, which made certain arrangements for the management of the property, and a decree was made in accordance with the compromise. The grantees who were not parties to this suit then sued to have the compromise and decree set aside on the ground of fraud. It was held, that the suit fell within the terms of Article 95, and there was nothing about it which made the exemption of section 10 of the Act applicable to it: *Muhammad Bakhsh v. Muhammad Ali*.⁽¹⁾

96.—For relief on the ground of mistake.	Three years.	When the mistake becomes known to the plaintiff.
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This Article is intended to apply to suits for relief on the ground of mistake of fact and of law.

(a) (No. 97, Act IX.) Article 97 of Act IX of 1871 referred to "mistake in fact." The omission of the words "mistake in fact" in the Act of 1877 shows that this Article is intended to apply to both mistake in fact and in law.

Although money paid under a mistake

(b) In *Edward James Daniell v. James Sinclair*,⁽²⁾

(1) I. L. R., 5 All., 294.

(2) L. R., 6 App. 181.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

it was held that a mortgage account that had been settled on the footing of compound interest with half-yearly rests, both parties wrongly understanding the mortgage deed to require the same, might be reopened. Although under certain circumstances the giving credit in account may be treated as so far equivalent to payment under mistake of law as to prevent sums wrongly credited being recoverable at law; yet in Equity, the line between mistakes in law and mistakes in fact has not been so clearly and sharply drawn. The Privy Council observe. "Undoubtedly there are cases in the courts of Common Law, in which it has been held, that money paid under a mistake of law cannot be recovered, and it has been further held that, under certain circumstances, the giving credit in account may be treated as so far equivalent to payment as to prevent sums wrongly credited being made the subject of set-off. (*Skyring v. Greenwood* 4 B. & C., 281). But in Equity, the line between mistakes in law and mistakes in fact has not been so clearly and sharply drawn." In *Earl Beauchamp v. Winn*, (Law Rep., 6 H. L. 234), Lord Chelmsford observes: "With regard to the objection, that the mistake (if any) was one of law, and that the rule *ignorantia juris neminem excusat*, applies, I would observe on the peculiarity of this case, that the ignorance imputable to the party was of a matter of law arising upon the doubtful construction of a grant. That is very different from the ignorance of a well known rule of law; and there are many cases to be found in which Equity, upon a mere mistake of the law, without the admixture of other circumstances, has given relief to a party who has dealt with his property under the influence of such a mistake."

of law cannot be recovered in the courts of Common Law, in Equity, the line between mistake in law and mistake in fact has not been so sharply drawn.

In *Cooper v. Phibbs*, (Law Rep., 2 H. L. 170). Lord Westbury says: 'Private right of ownership is a mutual mistake

If parties contract under a mutual mistake

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

as to their rights, agreement is liable to be set aside.

matter of fact; it may be also the result of matter of law; but if parties contract under a mutual mistake as to their relative and respective rights, the result is that that agreement is liable to be set aside, as having proceeded upon a common mistake.

Suit to be relieved against renunciation of claim made under a mistake respecting the validity of marriage.

In *M'Carthy v. Decaix* (2 Russ. and My., 614), where a person sought to be relieved against a renunciation of a claim to property, made under a mistake respecting the validity of a marriage, the Lord Chancellor observes: "What he has done was in ignorance of law, possibly, of fact; but, in a case of this kind, this would be one and the same thing.

Mistake resulting from a misconstruction of a will.

In *Livesey v. Livesey* (3 Russ. 287), an executrix who, under a mistake in the construction of a will, had overpaid an annuitant, was permitted to deduct the amount overpaid from subsequent payments."

Suit for the recovery of excess payment on account of road cess, falls under this Article. (Feb, 1886.)

(c) In *Mathura Nath Kundu v. Debendra Nath Kundu*,⁽¹⁾ plaintiffs sued in July, 1882, for the excess payments, amounting to Rs. 6-14-7, realized from them as road and public work cesses from 1873 to 1879. Both the lower courts dismissed the suit as barred by one year's limitation provided in section 27, Bengal Act VIII of 1869. It was held, that the suit was governed by this Article and not by the Bengal Act which provides only for the recovery of cess as rent, and not for the recovery of excess payment.

Suit for money paid to defendant either through his fraud or by mistake on the part of the Collector, falls under this Article or Article 95. (April 1883.)

(d) In *Viraragava v. Krishnasami*,⁽²⁾ K, in 1876, sued M on a bond dated 25th December, 1869, for Rs. 5,000, by which certain land in the District of South Tanjore was hypothecated as surety for the debt, and obtained a decree on the 6th of April, 1876, for the sale of the lands which he purchased on the 17th August, 1876, for

(1) I. L. R., 12 Cal., 33. | (2) I. L. R., 6 Mad., 345.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Rs. 6,000. *K* then discovered that part of the land hypothecated, situated within the jurisdiction of the Subordinate Court at Kumbakonum, had been acquired by a Railway Company under Land Acquisition Act in 1874, and that the compensation, Rs. 460 (claimed by *M*'s mother, who sold the land to the company), was lodged in the Treasury of Kumbakonum in the name of *M*'s mother. *K*, having applied to the Subordinate Court for an order for payment out of this sum, the court, by order dated 28th February, 1880, directed that the question of title to the money should be decided by a suit. *K* then sued *M* as the sole heir of his deceased mother in the District Munsif's Court of Tiruvadi (where *M* resided) for a declaration of right to, and recovery of, the said sum of Rs. 460. The suit was filed on the 4th September, 1880. It was held that the suit was not barred by limitation, as the compensation was awarded to *M*'s mother either through fraud on her part, or mistake on the part of the Collector, and *K* did not become aware of the fraud or mistake until within six years of the suit. (Articles 95, 96 of schedule 2 of the Indian Limitation Act.)

97.—For money paid upon an existing consideration which afterwards fails.	Three years.	The date of the failure.
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(a) (No. 98, Act IX.) In *Koji Ram v. Ishar Das*,⁽¹⁾ pending an appeal from a decree for pre-emption in respect of certain property, conditional upon payment of Rs. 1,595, the pre-emptor-decree-holder, in August, 1880, applied for possession of the property in execution of the decree, alleging payment of the Rs. 1,595, to the judgment-debtors out of court, and filing a receipt given by them for the money. This application was ultimately struck off. In April, 1881, judgment was given in the appeal

Suit for money paid by a pre-emptor under a decree for pre-emption which has become void, by failure to pay the sum enhanced by the appellate court by time fixed, falls under this Article or under Article 120.

(1) I. L. R., 8 All., 273.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

increasing the amount to be paid by the decree-holder to Rs. 1,994, which was to be deposited in court within a certain time. The decree-holder did not deposit the balance thus directed to be paid, and the decree for possession of the property accordingly became void. In 1882, the decree-holder assigned to *K* his right to recover from the judgment-debtors the sum of Rs. 1,595, which he paid to them in August, 1880. In December, 1883, *K* sued the judgment-debtors for recovery of the Rs. 1,595 with interest. It was held that No. 97, and if not, No. 120, would apply, and the suit was therefore not barred by limitation.

98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years.	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
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(No. 99, Act IX; sec. 2, Act XIV.) As to the liability for breach of trust, see section 23, Act II of 1882.

99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Three years.	The date of the plaintiff's advance in excess of his own share.
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Suit for contribution when money was realised by sale of plaintiff's property, was doubted to fall under this Article.

(a) (No. 100, Act IX.) This Article is a reproduction of Article 100 of Act IX of 1871. In *Fuckoruddeen Mahomed Ahsan v. Mohima Chunder Chowdhry*,⁽¹⁾ plaintiff and defendants were jointly liable under a decree which was satisfied solely by the sale of the plaintiff's property on the 7th June, 1883. In June, 1876, plaintiff filed a suit for contribution. The plaint was returned for

(1) I. L. R., 4 Calc., 529.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

amendment on the 14th June, to be re-presented within one week, but it was not filed until 17th July, 1876. The Lower Appellate Court rejected the suit as barred by the corresponding Article 100 of Act IX of 1871. As limitation begins to run from the date of the plaintiff's advance and as nothing was paid in this case by the plaintiff whose property alone was sold and money realised, it was a question whether Article 100 or Article 118 corresponding to 120 of the Act of 1877, applied to this case. Without deciding upon that point the court held that the suit was within time from the date that sale proceeds were paid to the decree-holder.

Without deciding whether Article 100 or 118 or 120 applied, the High Court held that the suit was within time.

(b) A suit for recovery of Government revenue which the defendant, as lessee, was bound to pay, but which has been paid by the plaintiff to save the whole estate from sale, where the plaintiff asks to have the amount so paid made a charge on the portion for which he paid it, is governed by Article 132 and not by this Article. Mitter, J., observes: "We think Article 99 has no application to the case, the plaintiff having paid the money, neither under a decree nor as a joint proprietor of this estate." *Ram Dutt Singh v. Horakh Narain, Singh.*⁽¹⁾ In *Deo Nundun v. Deshpunty*,⁽²⁾ it was held, that a suit for contribution, by a sharer in a joint estate, where the amount of revenue paid in excess is sought to be made a charge on the share for which it was paid, is governed by Article 132 and not by this Article.

Suit for Government revenue paid by a lessee to protect the estate from sale does not fall under this Article.

(c) When a person has paid more than his share of a joint decree, limitation runs against a suit for contribution from the time that the excess payment was actually made to the decree-holder: *Radha Kristo Balo v. Rup Chunder Nundi.*⁽³⁾

Time runs from the date that excess payment was actually made to decree-holder.

(1) I. L. R., 6 Calc., 549. | (2) 8 C. L. R., 210.
(3) 3 C. L. R., 480.

Description of suit.	Period of limitation.	Time from which period begins to run.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	PART VI. Three years.	When the right to contribution accrues.

(No. 101 Act IX; sec. 2, Act XIV.) As to contribution between co-trustees, see section 27, Act II of 1882.

101.—For a seaman's wages.	Three years.	The end of the voyage during which the wages are earned.
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Seamen are persons engaged in navigating ships on high seas as opposed to watermen who are engaged in navigating in rivers and lakes.

(a) (No. 102, Act IX.) Seamen are persons engaged in navigating ships, barges, &c., upon the high seas. Regulations regarding seamen differ in different countries; but in all, they have been intended to obviate the dispute that might otherwise arise between a master and seaman as to the terms of the contract between them, to secure due obedience to the master's orders, and to interest the seamen in the completion of the voyage by making their earnings depend on its successful termination.—*Wharton*.

102.—For wages not otherwise expressly provided for by this schedule.	Three years.	When the wages accrue due.
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This Article is general and covers suits for wages which do not fall under Articles 4, 7 and 101.

103.—By a Muhammadan for exigible dower (<i>mu' ajjal</i> .)	Three years.	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
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"Exigible" implies that it may, not that it must, be exacted. (Dec 1872.)

(a) (No. 103, Act IX.) "Prompt dower is said to be exigible immediately. Macnaghten, in his Principles of Mahomedan Law, p. 59, says:—'Where it has not been expressed whether the payment of the dower is to be

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

prompt or deferred, it must be held that the whole is due on demand.' The word 'exigible' implies that it may, not that it must, be exacted, and therefore it would seem that a cause of action in respect of it does not accrue so long as the marriage exists until the wife does something to show that she requires it to be paid. According to the Mahomedan law, a woman may refuse herself to her husband as a means of obtaining so much of her dower as is prompt. *Bailies' Digest of Mahomedan Law*, p. 125. That is a mode of exacting it. But she is not obliged to adopt it. It is optional with her either to insist upon the payment of her prompt dower, during her husband's lifetime, or to wait until the dissolution of the marriage." In respect of prompt dower, limitation does not begin to run before the dower is demanded, or marriage is dissolved by death or otherwise. *Mussamut Mulleeka v. Mussamut Jumeela*.⁽¹⁾

As to prompt dower, limitation does not begin to run before demand or dissolution of marriage by death or otherwise.

(b) The prompt or exigible dower under the Mahomedan Law may be regarded as a debt always due and demandable during the subsistence of the marriage, and certainly payable on demand. On a clear and unambiguous demand by the wife for payment, and refusal by the husband to pay such dower, a cause of action accrues, against which limitation begins to run. An application under section 299, Act VIII of 1859, by a Mahomedan woman for leave to sue her husband for exigible dower *in forma pauperis*, may be taken to express her intention of bringing an action for dower, only if she obtains leave to do so as a pauper. Until she has the court's permission to sue, her application does not amount to a demand by way of action. A counter-petition by the husband objecting to the pauper suit being allowed, and denying

Unambiguous demand by wife and refusal by husband gives cause of action.

Leave to sue as pauper does not amount to demand by action until court's permission to sue is obtained.

In opposing pauperism, husband's denial of liability will not constitute cause of action.

(1) 11 B. L. R., P. C., 375.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

his liability to pay the dower, does not alter the character of the proceedings, since no opposition on his part can constitute a cause of action, unless there has been a previous demand by the wife; the option being with her to demand the dower or not, and to elect her time for demanding it. *Ranee Khajooroonnissa v. Mirza Saifoolla Khan.*⁽¹⁾

104.—By a Muhammadan for deferred dower (<i>mu'ajjal</i> .)	Three years.	When the marriage is dissolved by death or divorce.
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Limitation runs from dissolution of marriage in the absence of any contract to the contrary. The terms to which payment to be deferred may be fixed by contract.

(a) (No. 104, Act IX.) It is, of course, indisputable that the term to which payment is to be deferred may be fixed by the contract; that, for example, the husband is at liberty to stipulate that the dower shall not be payable until divorce, or his own death. The difficulty is to say what is the rule in the absence of express stipulation, as where the dower is merely described as "*mowajjil*," or deferred. *Mirza Bedar Bukht Mohummed Ali Bahadoor v. Mirza Khurram Bukht Yahya Ali Khan Bahadoor.*⁽²⁾ This Article makes the limitation to run from the dissolution of the marriage by divorce, or by the death of either the husband or the wife, in the absence of any contract as to the time of payment.

Wife's heirs' claim for deferred dower is a money claim founded on husband's contract.

(b) According to Mohammedan Law, when the heirs of a woman claim dower from her husband, which was *mowajjil* or deferred, and not due or payable till her death, their claim is a simple money claim founded solely on the contract made by the husband; and a suit for such dower must be brought within three years of the wife's death (Act XIV of 1859, section 1, clause 10.) The husband is not a trustee for his wife in respect of her dower, nor has the wife a lien on her husband's property. *Mir Mahar Ali v. Amani.*⁽³⁾

The wife has no lien on her husband's property.

(1) 15 B. L. R., P. C., 306. | (2) 19 W. R., 315. | (3) 2 B. L. R., 306.

Description of suit.	Period of limitation.	Time from which period begins to run.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	PART VI. Three years.	When the mortgagor re-enters on the mortgaged property.

(a) (No. 105, Act IX.) The term trustee is defined not to include a mortgagee remaining in possession after the mortgage has been satisfied. In *Baboo Lall Doss v. Jamal Ally*,⁽¹⁾ which was a suit governed by Act XIV of 1859, it was held that a claim for the surplus collections which have been received by the mortgagee fell under clause 16, and that he was entitled to whatever may be found due to him upon a balance of accounts for six years before the commencement of the suit.

Under Act XIV of 1859, plaintiff was held entitled to collections for six years before suit. (January 1868.)

(b) Under this Article, whatever may be found due upon a balance of accounts from the commencement of the mortgage would not be barred if the suit is instituted within three years from the time that the mortgagor re-enters on the property mortgaged.

This Article entitles plaintiff to recover balance from the commencement of mortgage.

106.—For an account and a share of the profits of a dissolved partnership.	Three years.	The date of the dissolution.
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(a) (No. 106, Act IX.) If from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members. Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time. Where a partnership has been entered into for a fixed term, no partner can, during such term, retire except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of court. Partnerships whether entered into for a fixed term or not, are dissolved by the death of any partner. (Section 253, clauses 7, 8, 9 and 10, Act IX of 1872.) "So long as a partnership continues existing, and each partner is in

This Article does not apply until dissolution of partnership which takes place either by a partner dying or ceasing to be partner.

(1) 9 W. R., 185, F. B.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

the exercise of his rights, and the enjoyment of his property, the Statute Law of Limitation has no application at all between the partners." (Banning, 204.)

Although a suit to take account and obtain a share be barred under this Article, plaintiff may sue to recover a share in a sum subsequently realised by a surviving partner.

(b) In *Merwanji Hormusji v. Rustomji Burjorji*,⁽¹⁾ it was held that a suit may be brought by the representative of a deceased partner against the surviving partner of a firm to recover a share in a sum received by the surviving partner in respect of a partnership transaction within the period of limitation, although a suit to take partnership accounts generally would be barred. It was further held, that the defendant might deduct the amount (if any) which might be found due to him on taking the partnership accounts, although a separate suit for such account would be barred by limitation. Latham, J., observes: "I think that the opinions of the majority of the Law Lords in that case (*Knox v. Gye*, L. R. 5, Eng. & Ir. Ap. 656,) do establish that a suit may be brought by the representative of a deceased partner against the surviving partner to recover a share in a sum received by the surviving partner in respect of partnership transactions within the period of limitation, although a suit to take the partnership accounts generally would be barred."

Suit for an account and for appointment of a liquidator and division of surplus does not fall under this Article.

(c) Where the plaintiff prays that the account of a partnership may be taken, that a liquidator may be appointed to wind up the affairs of the partnership and that (after realization of the assets and satisfaction of the liabilities of the same) the partners may severally be decreed in a certain proportion out of what remains, the suit has a wider scope, and is not governed by this Article, but by Article 120. *Harrison v. The Delhi and London Bank*,⁽²⁾ (see *Note F* under Article 120). In the above case, Straight, J., has discussed upon the nature of a suit falling under this Article, and of an application

(1) I. L. R., 6 Bom., 628.

(2) I. L. R., 4 All., 437.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

made under section 265 of the Contract Act. The Allahabad High Court, in *Ramjiwan Mal v. Chand Mal*,⁽¹⁾ held that the ordinary Civil Courts have jurisdiction to try a suit for dissolution of a partnership, their jurisdiction to try such suits not being ousted by section 265 of the Contract Act, 1872. It is proposed to make suits under section 265 of the Contract Act cognizable by District Munsiffs and Subordinate Judges. See Bill No. III of 1885.

A. H.
Ordinary Civil
Courts can try
suits for dissolution of partnership.
(Dec. 1884.)

107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Three years.	The date of the payment.
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(No. 107, Act IX.)

108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Three years.	When the trees are cut down.
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(No. 108, Act IX.)

109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years.	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.
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(a) (No. 109, Act IX.) In the case of the recovery of mesne profits collected or received under a decree, afterwards set aside in appeal, this Article makes the period to run from the time that the plaintiff "recovers possession" instead of from the date of the decree of the Appellate Court as provided for by the corresponding Article of Act IX of 1871.

(1) I. L. R., 7 All., 227.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

Suit for the value of standing crops carried away after taking possession under decree for ejectment and rent which was afterwards set aside, held to fall under this Article.

(b) In *Shurnomoyee v. Pattarri Sirkar*,⁽¹⁾ the defendant, in November, 1873, obtained a decree for arrears of rent and ejectment and in execution evicted the plaintiff in January, 1874, and afterwards carried away the standing crops on the land. On appeal by the plaintiff the decree was modified, and the plaintiff was allowed 15 days' time to deposit the rent. The plaintiff accordingly deposited the rent, and recovered possession of the tenure and brought the suit to recover the value of the crops carried away. It was held that such a suit was governed by the corresponding Article of Act IX of 1871, and that it was not a suit for compensation for any wrong, &c., within the meaning of Article 40 of the said Act corresponding to Article 36 of Act XV of 1877.

Claim for mesne profits for period preceding the three years before suit held barred.

(c) A claim for mesne profits during a period preceding the three years next before the filing of the plaint is barred by Act XV of 1877, schedule 2, Article 109. An Under-proprietor having been dispossessed by a manager of the superior estate, appointed under the Oudh Talukdar's Relief Act, 1870, recovered possession under a decree, and afterwards sued for mesne profits. It was held that a person who had not himself received the mesne profits having come into possession of the Taluk upon its being released from management under the above Act, would not be chargeable with sums, which, as it was alleged, might have been received by way of mesne profits, but had not been received in consequence of the manager's wilful default; there being nothing to show that such Talukdar could be charged with anything more than was actually received by him. There being no rule of law obliging the court to allow interest upon mesne profits, it is a matter for the discretion of the court upon consideration of the facts whether to allow interest or not. *Krishnanand v. Kunwar Partab Narain Singh*.⁽²⁾

It is discretionary with a court to allow interest or not on mesne profits.

(1) I. L. R., 4 Calc., 625. | (2) I. L. R., 10 Calc., 785.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI. Three years.		

(d) In *Byjnath Pershad v. Badhoo Singh*,⁽¹⁾ it was held where the amount of mesne profits cannot be ascertained till after the end of the year, the cause of action does not arise until the end of the year. Parties in possession are liable for wasilat to the legal owners whom they keep out of possession, even though there was no *malâ fides* on their part.

When the amount of mesne profits cannot be ascertained till after the end of the year, cause of action does not arise till then.

110.—For arrears of rent ... Three years. | When the arrears become due.

(a) (No. 110, Act IX; cl. 8, sec. 1, Act XIV.) In *Kashikant Bhuttacharji v. Rohinikant Bhuttacharji*,⁽²⁾ it was held that the last day on which a suit for the recovery of arrears of rent can be instituted under section 29, Beng. Act VIII of 1869, is the last of the third year from the close of the year in which the rent became payable. Garth, C. J., observes: "the rent becomes due at the last moment of the time which is allowed to the tenant for payment. If it is not paid within that time, it becomes an arrear, and continues an arrear until it is paid."

Rent becomes due at the last moment of the time allowed to tenant for payment. "Arrear" in section 29 of the Rent Act means "rent in arrear."

111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money. Three years. | The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.

(a) (No. 111, Act IX.) The right of a vendor to receive his purchase money which is secured by his lien on the land sold, does not accrue within the meaning of this section until the time for completion arrives, or until the title is accepted, if that is subsequent to the time fixed for the completion (*Toft v. Stephenson*, 5 D. M & G. 442; *Kennedy v. Whaley*, 12 Ir. L. 735.)⁽³⁾

English case on vendor's lien.

(b) A vendor of immoveable property who has given possession to the purchaser is not entitled to rescind the contract of sale and recover possession because the

B. H. Vendor has a lien on the property for unpaid purchase money. (Nov. 1878.)

(1) 10 W. R., 486.

(2) I. L. R., 6 Calc., 325.

(3) *Darby and Bosanquet*, p. 122.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VI.
Three years.

purchase money is not paid. His remedy is to sue for the sum due, and he has a lien on the property for the amount. *Trimalrav Baghavendra v. The Municipal Commissioners of Hubli.*⁽¹⁾

Creditor of an unpaid vendor cannot claim a lien.

(c) A creditor of an unpaid vendor cannot claim a lien upon the property sold for any unpaid portion of the purchase money. *Huriram v. Dinpal.*⁽²⁾

112.—For a call by a company registered under any Statute or Act.	Three years.	When the call is payable.
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Suit by official liquidator in the name and behalf of the company after it was wound up, for the amount of calls, does not fall within the words of this Article.

(a) (No. 112, Act IX.) In the *Parell Spinning and Weaving Company, Limited, v. Manek Haji*,⁽³⁾ the suit was filed in March, 1886, by the official liquidator against the defendant, who was a holder of 21 shares in the company to recover (along with other calls) the amount of the said call of 1st October, 1882. As to this part of the claim, the defendant pleaded limitation. It was held that the suit being brought not by the company, but by the liquidator, Article 120 of the Limitation Act XV of 1877 applied, and that the claim was, therefore, not barred.

113.—For specific performance of a contract.	Three years.	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
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(a) (No. 113, Act IX.) The corresponding Article of Act IX of 1871, made the period to begin, "when the plaintiff has notice that his right is denied," while this Act makes it to run from "the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused."

Decreeing specific performance is discretionary.

(b) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such

(1) I. L. R., 3 Bom., 172. | (2) 11 C. L. R., 339.

(3) I. L. R., 10 Bom., 483.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

relief merely because it is lawful to do so ; but the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal.⁽¹⁾

Discretion is not arbitrary.

(c) In *Mokund Lall v. Chotay Lall*,⁽²⁾ Pigot, J., observes : “ on reference to Lord Justice Fry’s book on specific performance, sections 1070 to 1079, where this subject is referred to, it will be noticed that the Lord Justice mentions several cases in which very considerable delay was held in England to be fatal, but in others not so. In section 1078, a delay of fourteen months was held not to be such a bar. In another case three-and-half years was considered fatal, and in more recent cases, a delay of one-and-half years, and a somewhat lesser delay, was held to be fatal.” “ The principle is an important one, and under the new Specific Relief Act, it is a principle which ought to be considered by the court in the exercise of its judicial discretion under section 22 of that Act.”

C. H.
What delay may be fatal to a suit for specific performance under section 22 Specific Relief Act.
(Sept. 1884.)

(d) In *New Beerbhoom Coal Co., v. Buloram Mahata*,⁽³⁾ which was a suit for the specific performance of an agreement entered into in 1858, to grant a patta when required, it appeared that the plaintiffs applied to the defendants for a patta in 1874, and in March, 1875, the defendants finally refused to make the grant, and the plaintiffs thereupon instituted their suit for specific performance. It was held, that they were not barred by limitation, as under the corresponding Article of Act IX of 1871, they had 3 years within which to bring their suit, from the time when they had notice that their right was denied.

The principle is an important one to be considered by court in the exercise of judicial discretion.

Suit brought in 1875, to enforce agreement of 1858, which was refused in 1874, held not barred. (April 1878.)

(e) *Ahmed Mahomed Pattel v. Adjein Dooply*,⁽⁴⁾ was a suit for specific performance. In 1860, certain shares

Suit brought in 1874, to enforce agreement of 1860, the condition precedent of which was

(1) Sec. 22 of the Indian Specific Relief Act I of 1877.

(2) I. L. R., 10 Calc., 1061. | (3) I. L. R., 5 Calc., 175.

(4) I. L. R., 2 Calc., 323.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

performed in 1862, held not barred as defendant refused performance only shortly before suit. (Sept. 1876.)

in a company then formed were allotted to *S*, on the understanding as the plaintiffs alleged, that 120 of such shares should, on the amount thereof being paid to *S*, be transferred to, and registered in the books of the company in the names of the plaintiffs. In 1862, the plaintiffs completed the payment to *S* in respect of the shares, and during his lifetime received dividends in respect of the said shares. *S* died in 1870, leaving a will, probate of which was granted to the defendant as his executor. In a suit brought by the plaintiffs, after demand of the shares from the defendant, and refusal by him to deliver them, to compel the defendant to transfer the shares to the plaintiffs and register the same in their names, the plaintiff's case was, that the shares had been held in trust for them, and that, consequently, their suit was not barred by lapse of time. It was held, that the transaction between *S* and the plaintiffs did not amount to "a trust for any specific purpose" within the meaning of section 10 of the Limitation Act, or to a trust at all, but to an agreement of which the plaintiffs were entitled to specific performance; and the limitation applicable was that provided by the corresponding Article 113 of Act IX of 1871, and, therefore, the suit was not barred, nor were the plaintiffs disentitled to relief by reason of any laches or delay in bringing the suit.

Plaintiffs were not disentitled to the relief by reason of any laches or delay.

Suit for specific performance of contract of sale and for possession is governed by this Article. (Feb. 1884.)

(f) A contract was made for the sale of certain immoveable property, in the event of the vendor obtaining a decree, establishing his title to the property, in a suit which had been brought for that purpose. The vendor obtained such decree in that suit. The purchaser subsequently brought a suit to have a sale deed executed and completed, and for possession of the property. It was contended that the limitation applicable to the suit was that provided by Article 144 of the Limitation Act, 1877,

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	.

and not this Article. It was held that the suit was essentially one for specific performance of contract, and the limitation applicable was this Article. The contention that, so far as the suit was for possession of immoveable property it should be governed by Article 144 was invalid. The right to possession sprang out of the contract of sale and the relief by giving possession was comprised in the relief by specific performance of the contract of sale, and could not be governed in this suit by any, but this Article. But assuming the suit might, so far as limitation was concerned, be entertained, still as the right to possession was dependent on the contract of sale, if the suit could not be maintained for specific performance of the contract, it could not be maintained for possession of the property sold under the contract. *Muhiuddin Ahmad Khan v. Majlis Rai.*⁽¹⁾

Relief by giving possession being comprised in the relief by specific performance of contract, if suit for the latter relief is barred, suit for possession cannot be maintained.

(g) In *Sheo Prasad v. Udai Singh*⁽²⁾ a vendee's suit for possession against the vendor who had to recover possession under a decree and who had not in the conveyance expressly promised or undertaken to put the vendee in possession, is not a suit for the specific performance of a contract. It is governed by Article 136 or 144. (See *Note F.*)

Vendee's suit for possession does not fall under this Article, but under Article 144. (Feb. 1880.)

(h) In *Sukho Bibi v. Ram Sukh Das*,⁽³⁾ plaintiffs sued for money due upon a registered award dated 1st April, 1877. The award fixed no date for payment of the money, and the suit was filed on the 27th July, 1881. Defendant pleaded that the suit was barred by limitation. It was held, that the suit was to have the award specifically enforced and that as by section 30 of the Specific Relief Act 1877, awards are placed on the same footing as contracts for the purposes of chapter 2 of that Statute; the suit was governed by this Article. The High Court

Suit on a registered award for money is one for specific performance. (Jan. 1883.)

Section 30 of the Specific Relief Act places awards on the same footing as contracts for the purposes of chapter 2 of that Act.

(1) I. L. R., 6 All., 231. | (2) I. L. R., 2 All., 718.

(3) I. L. R., 5 All., 263.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

If a demand from plaintiff is a condition, cause of action accrues only on demand. (Nov. 1880.)

remanded the suit for a finding on the following issues, Did the plaintiff call upon the defendants to carry out the terms of the award; if so, when; and did the defendant refuse; (ii) If no actual demand was made, had he notice that the defendant refused to perform, and if so, at what date had he such notice.

(i) In *Virasami Mudali v. Ramasami Mudali*⁽¹⁾ two brothers, V and E, in 1861, agreed together that part of their house should be divided and part enjoyed in common; each brother was to occupy an assigned division and have the use in common of the rest. If either wished to have the house, he was bound to offer his share to the other at a fixed price; or if he wished to purchase the share of the other, and the other refused to sell, then the party refusing to sell at a fixed price was bound to buy the share of the other brother who wished to purchase. V called upon E, in 1877, either to pay Rs. 418 or give up the house. It was held, that until demand no cause of action arose, and that limitation began to run from the date of demand.

114.—For the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
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This does not apply to third party's suits to cancel instrument.

(a) (No. 114, Act IX.) This Article refers to the rescission of contracts as between promisor and promisee and not to suits by third parties to have an instrument cancelled or set aside, which fall under Article 91. *Bhawani Prasad Singh v. Bisheshar Prasad Misr*.⁽²⁾

Rescission of contracts.

(b) As to rescission of contracts, see sections 35 to 38 of Act I of 1877.

(1) I. L. R., 3 Mad., 87.

(2) I. L. R., 3 All., 846.

Description of suit.	Period of limitation.	Time from which period begins to run.
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	<p style="text-align: center;">PART VI.</p> <p>Three years.</p>	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

(a) (No. 115, Act IX ; cl. 9 and 10, sec. 1, Act XIV.) “Compensation.”
 “The term compensation is a general term used in the Indian Contract Act, section 73, to denote the payment which a party is entitled to claim on account of loss or damage arising from breach of contract. The effect in this place is to exclude suits for specific performance.” “Compensation” is used in the same sense in this Article. *Vythilinga Pillai v. Thetchanamurti Pillai*.⁽¹⁾ Suit for a sum of money is none the less a “suit for compensation,” because it is brought for the specific sum due on a bond. *Ganesh Krishn v. Madhavrav Ravji*.⁽²⁾

Suit for money is none the less a “suit for compensation.”

(b) *Rameshwar Mandal v. Ram Chand Roy*,⁽³⁾ was a suit brought by plaintiff to recover money lent on a verbal agreement, to repay it with interest within one year from the date of the loan. The suit was brought more than three years after the date of the loan. The defendant pleaded limitation under Articles 57 and 59. Garth, C. J., holding that the suit is governed by this Article, observes: “that the contract set up by the plaintiff is one of a special nature. In consideration of a present advance by him, the defendant is said to have agreed to repay the money at the end of a year with interest. This being the contract, it is clear that the plaintiff would have no right of suit until the expiration of the year. In England, by the Statute of Frauds, a

This Article applies to all verbal contracts.

Observations of Garth, C. J.

(1) I. L. R., 3 Mad., 76.

(2) I. L. R., 6 Bom., 75.

(3) I. L. R., 10 Calc., 1033.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

contract which is not to be performed within three years from the making thereof must necessarily be in writing. But here we have no Statute of Frauds; and in commercial affairs people are at liberty to make any verbal contracts they please."

This applies to suits by consignee against Railway Company for non-delivery.

(c) *Hassaji v. The East India Railway Company*,⁽¹⁾ was a suit brought by the consignee of goods against the company for non-delivery of 93 bags, and consequently for compensation. Loss was discovered on the 28th September, 1877, at latest, and if Article 30 applied to the case, the suit was barred, as it was brought on the 2nd October, 1879. The court being of opinion that there was a privity of contract between the consignee and the company, inasmuch as the property in the goods which were not sent on sample or for approval, passed at once to the consignees on delivery to the company, and that the consignor, in contracting with the company, acted as consignee's agent, held, that under this Article the plaintiff was entitled to three years from the date of the breach of contract.

Property in goods not sent on sample passes to consignee on delivery to the company and consignor acts as consignee's agent.

Suit against a Steam Navigation Company for value of goods short delivered, falls under this Article.

(d) In the *British India Steam Navigation Company v. Hajee Mahomed Esack and Company*,⁽²⁾ plaintiffs claimed Rupees 6,304 compensation for value of goods short delivered. Goods were shipped in different vessels of the company between October, 1876, and March, 1878, at Calcutta, to be delivered at the port of Madras, under the terms of the bills of lading. The suit was brought on the 31st October, 1879. With the exception of a shipment made in February or March, 1878, it was admitted that the other contracts were made and should have been performed more than two years before the suit. It was argued that the claim was barred by Article 30; the court held that although the Steam Navigation Company are not

Though Steam Navigation Company are

(1) I. L. R., 5 Mad., 388. (2) I. L. R., 3 Mad., 107.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. Three years.	

common carriers, for the purposes of Indian Carriers' Act, they are nevertheless common carriers, and their character of carriers continues so long as the goods remained in their hands and undelivered, and that this suit is clearly a suit for breaches of the contracts to deliver, and there being no special provision for compensation for the breach of such contracts, the suit is governed by clause 115.

not common carriers for the purposes of Indian Carriers' Act, they are common carriers so long as goods remain in their hands and undelivered.

(e) In *Madda v. Sheo Bakhah*,⁽¹⁾ plaintiff sued in July, 1880, for Rs. 300 as compensation due by defendant in consequence of his having contracted a marriage with the widow of the plaintiff's deceased brother according to a custom prevailing among their caste. The defendant admitting the custom pleaded limitation. It was held that the suit was governed by this Article and not by 120.

Suit for costs of a widow's re-marriage as per custom of Jata of Ajmir falls under this Article.

(f) Where there are successive breaches, as for instance in the case of non-payment of an annuity secured by bond or covenant, a fresh cause of action arises upon every fresh breach, so that time may be a bar to the remedy or earlier breaches without affecting the remedy on subsequent ones; and where the breach is a continuing breach, a fresh cause of action arises at every moment of the time during which the breach continues.⁽²⁾

Every successive breach gives fresh cause of action.

116.—For compensation for the breach of a contract in writing registered.	PART VII. Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
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(a) In this Article, the word "compensation" seems to be used in the sense in which it appears in section 73 of Contract Act IX of 1872. In a suit for compensation for breach of a contract in writing and registered, whether such compensation be for a liquidated or

"Compensation."

(1) I. L. R., 3 All., 385. | (2) *Darby and Bosanquet*, p. 100.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

Observations of
Straight, J.

unliquidated sum, the limitation applicable is six years, as prescribed by this Article: *Harender Kishore Singh v. The Administrator-General of Bengal*.⁽¹⁾ In *Husain Ali Khan v. Hafiz Ali Khan*,⁽²⁾ Straight, J., observes: "The introduction of the word 'compensation' has perhaps not unnaturally given rise to some difficulty, but I cannot so interpret it as to hold that the longer period of limitation, of which registered instruments had the advantage before Act XV of 1877 became law, was thereby summarily abridged." (See also *Vythilinga Pillai v. Thetchanamurti Pillai*,⁽³⁾ and also *Note A* under Article 115.)

Suit on a re-
gistered money
bond falls under
this Article.

(b) In *Nobocoomar Mookhopadhya v. Siru Mullick*,⁽⁴⁾ plaintiff sued on a registered money-bond, and in deciding upon a question of limitation, it was held that, as under the Acts of 1859 and 1871 the period of limitation in the case of a registered bond or other contract was six years, unless it was clear from the later Act that the Legislature intended to change the period from six to three years, it would be unfair to oblige persons to sue within the shorter period, and that this was a suit for compensation for breach of contract. This decision was followed by A. H. in *Husain Ali Khan v. Hafiz Ali Khan*,⁽⁵⁾ which is a Full Bench case, and *Gauri Shankar v. Surju*,⁽⁶⁾ and *Khunni v. Nasir-ud-din Ahmad*.⁽⁷⁾ Following the above decisions, B. H., in *Ganesh Krishn v. Madhavrav Ravji*,⁽⁸⁾ held that the general remedy for breach of contract registered, is a suit for compensation for any loss or damage sustained by the plaintiff, and that the suit is none the less a suit for compensation, because it is brought for a specific sum due on a bond. In *Magaluri*

(1) I. L. R., 12 Calc., 357.

(2) I. L. R., 3 All., 609.

(3) I. L. R., 3 Mad., 76.

(4) I. L. R., 6 Calc., 94.

(5) I. L. R., 3 All., 600.

(6) I. L. R., 3 All., 276.

(7) I. L. R., 4 All., 255.

(8) I. L. R., 6 Bom., 75.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

Garudiah v. Narayana Rungiah,⁽¹⁾ plaintiff sued on a registered bond payable in eleven yearly instalments; the bond was dated March, 1870. The suit was brought to recover the 5th instalment, which fell due in March, 1874, and also the 6th, 7th, 8th, 9th and 10th instalments. Certain persons who had meddled with the debtor's property after his death were also made co-defendants. It was held that the suit was governed by this Article, and, as the property had been misappropriated within three years of the suit, the suit was not barred.

(c) Following the above ruling, *A. H. in Kishen Lal v. Kinlock*,⁽²⁾ in which plaintiff, as purchaser from the vendee of the defendants who, by sale deed, dated 8th June, 1873, had agreed to refund a sum of money proportionate to the deficiency in the area of the land conveyed, sued the defendants on the 7th June, 1879, for the value for the deficiency, held that the suit was governed by this Article and not by 96.

Suit for refund of proportionate value for deficiency of land sold, falls under this Article.

(d) In *Vythilinga Pillai v. Thetchanamurti Pillai*,⁽³⁾ plaintiff sued for arrears of rent due in and before 1876, on a registered contract. The Small Cause Judge rejected the suit as barred. It was held that the suit was governed by this Article and that "the word compensation in this Article is used in the same sense as in the Contract Act, section 73." This Article is observed to cover contracts for payment of rent as well as other contracts when in writing, registered.

Suit for arrears of rent due on a registered contract falls under this Article.

(e) In *Harender Kishore Singh v. The Administrator-General of Bengal*,⁽⁴⁾ A, in April, 1875, entered into an agreement in writing with B, whereby he agreed to act as the manager of B's Zemindaries and other landed properties for three years, on certain terms therein

Suit against a deceased agent's representative for money received by agent as such, falls under this Article, if the agreement is registered.

(1) I. L. R., 3 Mad., 359.

(2) I. L. R., 3 All., 712.

(3) I. L. R., 3 Mad., 77.

(4) I. L. R., 12 Calc., 357.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

Three years' time applies to suits for monies not coming within the scope of registered agreement.

Endorsee's suit against the endorser of a registered promissory note is not governed by this Article if endorsement is not registered.

mentioned; the agreement was duly registered. On the 15th June, 1882, *B* sued the Administrator-General of Bengal, as administrator of *A*'s estate, to recover certain sums of money set forth in detail in the plaint, as having been received by *A*, and not accounted for, stating that they had been misappropriated by *A*. It was held that in respect of such sums as were received by *A* in virtue of his position as manager under the registered agreement, the limitation of six years applied; but that in respect of the sums received by him in the course of transactions which did not come within the scope of the registered agreement, the limitation of three years applied.

(f) In *Kylasanada Moodelly v. Armugum Moodelly*,⁽¹⁾ the defendant, the payee of a promissory note, endorsed it to the plaintiff. The endorsement was 'Pay to *K. M.* (plaintiff) or his order.' The promissory note had been registered previous to the endorsement to plaintiff. A suit was brought by the plaintiff three years after the date of the endorsement to recover the amount of the note from the defendant.

117.—Upon a foreign judgment as defined in the Code of Civil Procedure.	Six years ...	The date of the judgment.
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"Foreign Judgment" means judgment of a court beyond the limits of British India.

(a) (No. 116, Act IX.) "Foreign Judgment" means the judgment of a foreign court. "Foreign Court" means a court situate beyond the limits of British India and not having authority in British India nor established by the Governor-General in Council. (See Act XIV of 1882.)

No suit is maintainable in any court in British India founded upon the judgment of a court, situate

(b) No suit is maintainable in any court in British India founded upon the judgment of a court, situate in a Native State. The courts of British India cannot enforce

(1) 4 M. H. C., R., 366.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

the decrees of any Native Courts, except as provided for by section 434 of the Civil Procedure Code. Under that section, the decrees of certain Native Courts may be executed in British India as if they had been made by the courts of British India. in Native States
(Feb. 1883.)

A suit will not lie in the Courts of India upon the judgment of any court in British India. The only exception to this rule was the case of judgments of a Court of Small Causes on which suits had been permitted to be brought in the High Court in order to obtain execution against immoveable property. *Bhavanishankar Shevak Ram v. Pursadri Kalidas.*⁽¹⁾ The Madras High Court, dissenting from the above ruling, held in *Sama Rayar v. Annamalai Chetti*,⁽²⁾ in August, 1883, that the courts in British India have jurisdiction to entertain suits brought upon the judgments of courts of Native States. They adhered to their own decisions in *Bhavanishankar Shevakram v. Pursadri Kalidas*,⁽³⁾ *Mathappa Chetti v. Chellappa Chetti*,⁽⁴⁾ *Kandasami Pillai v. Moiden Saib*,⁽⁵⁾ *Nallatambi Mudaliar, v. Ponnusami Pillai*.⁽⁶⁾ The Bombay High Court in *Himmat Lal v. Shivaji Rav*,⁽⁷⁾ adhered to their own decision in July, 1884. B. H. held a suit
will not lie in
the courts of
India upon
judgments of
any Court in
British India.

M. H. held
otherwise.
(August 1883.)

B. H. adhered
to their own de-
cision.
(July 1884.)

(c) Under Section 434 of the Code of Civil Procedure, the Governor-General in Council is pleased to declare that the decrees of the High Court of the State of Travancore and of the Zillah Courts and the Courts of Munsiffs established in that State, and that the decrees of the Appeal Court of the State of Cochin, and of the Zillah Courts and the courts of Munsiffs established in that State, may be executed in British India as if they had been made by the Courts of British India. Government of
India sanction-
ed enforcement
by the British
Courts of de-
crees of Native
Courts of Tra-
vancore and
Cochin States. Provided that

(1) I. L. R., 6 Bom., 292.

(4) I. L. R., 1 Mad., 196.

(2) I. L. R., 7 Mad., 164.

(5) I. L. R., 2 Mad., 337.

(3) I. L. R., 6 Bom., 292.

(6) I. L. R., 2 Mad., 400.

(7) I. L. R., 8 Bom., 593.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	
<p>when the decrees sent to a Court in British India for execution is a decree of the Court of a Munsiff, the documents mentioned in section 224 of the Code of Civil Procedure bear the counter signature of the Judge of the Zillah Court, to which the Court of the Munsiff is subordinate ; Government of India Notification, <i>Fort St. George Gazette</i>, 6th January, 1886, part 1, p. 9, Nos. 4035-4036.</p>		
118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Six years ...	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Do.	When the rights of the adopted son as such are interfered with.

Article 129 of Act IX of 1871, has been split into 118 and 119 in the Act of 1877, reducing the period from twelve to six years.

(a) The corresponding Article 129 of Act IX of 1871, gave to suits to establish or set aside an adoption twelve years from the date of adoption, or, at plaintiff's option, the date of the adoptive father's death. The Limitation Act of 1877 splits the Article into two, one (118) providing for declaration that an adoption is invalid or never in fact took place and giving it six years from the date of the plaintiff's knowledge of adoption, and the other (119) providing for declaration that an adoption is valid and prescribing a period of six years from the time that the adopted son's right was interfered with.

The expression "suit to set aside an adoption" was not quite, precise as an adoption can hardly be set aside though a pretended adoption may be declared to be no adoption at all. Observations of F. C.

(b) The expression "suit to set aside an adoption" in Article 129 of Act IX of 1871 'was not quite precise as applied to any suit.' An adoption may be established, but can hardly be set aside, though an alleged or pretended adoption may be declared to be no adoption at all. The Lords of the Privy Council observe : "It thus appears that the expression "set aside an adoption" is, and has been for many years, applied in the ordinary language of

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

Indian Lawyers to proceedings which bring the validity of an alleged adoption under question, and applied quite indiscriminately to suits for possession of land and to suits of a declaratory nature. It is worth observing that in the Limitation Act of 1877, which superseded the Act now under discussion, the language is changed. Article 118 of Act XV of 1877, which corresponds to Article 129 of 1871, so far as regards setting aside adoptions, speaks of a suit "to obtain a declaration that an alleged adoption is invalid or never in fact took place," and assigns a different starting point to the time that is to run against it. Whether the alteration of language denotes a change of policy, or how much change of law it affects, are questions not now before their Lordships. Nor do they think that any guidance in the construction of the earlier Act is to be gained from the later one, except that we may fairly infer that the Legislature considered the expression 'suit to set aside an adoption' to be one of a loose kind, and that more precision was desirable.

The term was applied by Indian Lawyers quite indiscriminately to suits for land and to suits of a declaratory nature.

Act of 1877 has altered the language as precision was considered necessary. Whether it denotes a change of policy or how much change of law it affects, are not questions before their Lordships.

If then, the expression is not such as to denote solely, or even to denote accurately, a suit confined to a declaration that an alleged adoption is invalid in law or never took place in fact, is there anything in the scope or structure of the Act to prevent us from giving to it the ordinary sense in which it is used, though it may be loosely, by professional men? The plaintiff's counsel were asked, but were not able to suggest any principle on which suits involving the issue of adoption or no adoption must, if of a merely declaratory nature, be brought within twelve years from the adoption, while yet the very same issue is left open for twelve years after the death of the adopting widow, it may be fifty years more, if only it is mixed up with a suit for the possession of the same property. It seems to their Lordships that the more

There is no principle upon which to say that a suit to declare adoption or no adoption must be brought within twelve years from adoption while the same issue is left open for twelve years after adopting widow's death, if only it is

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

mixed up with a suit for possession of property.

Suit by collateral heirs questioning adoption was held barred as suit was brought more than twelve years from the date of adoption though less than twelve years from the death of the surviving widow (April 1886.)

The above case was distinguished from a former case in which the widow had not adopted as heir to her husband, but as her own heir.

rational and probable principle to ascribe to an act whose language admits of it, is the principle of allowing only a moderate time within which such delicate and intricate questions as those involved in adoptions shall be brought into dispute, so that it shall strike alike at all suits in which the plaintiff cannot possibly succeed without displacing an apparent adoption by virtue of which the defendant is in possession." *Jagadamba Chaodhrani v. Dakhina Mohun Roy Chaodhri.*⁽¹⁾ In this case the plaintiffs, as collateral heirs of a childless Hindu, questioned adoptions purporting to have been made by his widows in pursuance of authority from him; such adoptions having been followed by continuous possession, and having been recognized in formal instruments, proceedings, and decrees to which the plaintiffs were parties. It was held, that on the ground that the adoptions were brought into question more than twelve years after their date, though less than twelve years after the plaintiffs' titles (if any) had accrued at the death of the surviving widow, the suits were barred under Article 129 of schedule 2 of Act IX of 1871.

This case was distinguished from *Baja Rahadur Singh v. Achumbit Lall*,⁽²⁾ in which plaintiff's claim was not affected by the widow's adoption. "It was brought by the heir of one Durga Pershad, to recover possession of his estate after his widow's death. The real contest was whether he had given an absolute interest to his widow which she could transmit to the defendant. But she had executed instrument called a deed of adoption, which their Lordships describe thus: 'this document cannot be seriously treated as an attempt on the part of the widow to adopt a son or sons as heirs to her husband, but of merely an adoption of heirs to herself, and in fact, a

(1) I. L. R., 13 Cal., 320. } (2) L. R., 6 Ind., App., 110.

Description of suit.	Period of limitation.	Time from which period begins to run.
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disposition of her property, very much in the nature of a will, to them after her death.' On the above view of the document, the words of the Statute would seem scarcely applicable to it. The plaintiff could recover the estate of Doorga Pershad without in any way disturbing the adoption."

(C) In *Srinath Gangopadhy v. Mahes Chandra Roy*,⁽¹⁾ in this case, a Hindu widow in 1824, assumed to adopt a son to her husband, and such son, and after him the defendant, his heir, was put in possession of the properties in suit. The widow died in 1861. The suit was instituted in 1866 to recover the property and to declare the adoption illegal. It was held that such possession during the life of the widow could not be said to be adverse as against the widow. The cause of action to the reversionary heirs arose at the time of the death of the widow, and was consequently not barred by limitation. Peacock, C. J., observes: "If in this case the adoption had been an act done by the widow as heir of her husband, the case would have been different; but the adoption by the widow was not in her character as heir to her husband; and the possession taken under her own adoption, and with her permission, was not adverse to herself as heir. It appears to me, that on the authority of the Full Bench case of *Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty*, (case No. 460 of 1867; 29th April, 1868) cited by the learned Advocate-General, we ought to hold that the cause of action did not accrue until the widow's death. In coming to this conclusion, I do not mean to say that a reversionary heir might not have a cause of action during the widow's life to set aside an invalid adoption, but that would be in the nature of a declaratory suit."

In a reversioner's suit for possession and declaration that adoption by widow was illegal, cause of action was held to accrue on widow's death. In this case adoption by widow was not in her character as heir to her husband. (Sept. 1869.)

Peacock, C. J., observes that the case could have been different if the widow had adopted heir to her husband.

Reversionary heir might have a cause of action during widow's lifetime to set aside invalid adoption by a declaratory suit.

(1) 4 B. L. R., 3.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

S. C.
In a reversioner's suit for possession from defendant who set up adoption by widow with her husband's permission, it was held that limitation would begin to run from widow's death. Under Act XIV of 1859. (Feb. 1871.)

(d) In *Rajendra Nath Haldar v. Jagendra Nath Haldar*,⁽¹⁾ by a Will dated 1837, a testator directed his property to be held in a particular way, and gave his widow power to adopt. In 1848, she adopted a son under the Will, with the knowledge of the members of the family, and the Will was, for a period of twenty-seven years, generally recognized and acted on by the testator's family. The plaintiff sued for possession in December, 1864, when the widow died. The Principal Sudar Amin rejected the suit on the ground among others that it had been barred by limitation. The High Court reversed the decision on appeal in April, 1867, holding that the mere fact of the adoption of another party does not prejudice the plaintiff's rights which are invaded only when the adopted son, on the death of widow, takes possession of the property as adopted son, and the Privy Council, while setting aside the judgment of the High Court, observed, "it has been candidly and fairly admitted at the bar by Mr. Bell, that it is impossible to impeach that decision; that, according to the authorities in India, time would only begin to run against the respondent from the date of the widow's death."

Sir James Colville.

C. H.
In a suit brought to declare adoption invalid, limitation was held to run from the date of adoption under Act XIV of 1859. (Dec. 1874.)

Another decision of C. H. with reference to Article 129. Act IX of 1871. (Feb. 1875.)

(e) In *Mrinmoyee Dabea v. Bhoobunmoyee Dabea*,⁽²⁾ which was brought in January, 1873, to have declared invalid the defendant's adoption which took place in May, 1856, it was held that the limitation provided by clause 16, section 1, Act XIV of 1859, was applicable to a suit for declaratory decree and that cause of action arose at the date of the adoption. *Siddhessur Dutt v. Sham Chand*,⁽³⁾ was brought by the reversionary heirs of a Hindu to set aside an adoption made with his permission. The Hindu died in 1844, and the adoption took place in 1845. The suit was instituted in June, 1873. It was held, that under Article 129 of Act IX of 1871, cause of action arose

(1) 7 B. L. R. 216, P. C. | (2) 15 B. L. R., 1. | (3) 15 B. L. R., 9.

Description of suit.	Period of limitation.	Time from which period begins to run.
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at the date of the adoption, *viz.*, 1845, the word "father" in the Article not including mother.

(f) In *Raj Bahadoor Sing v. Achumbit Lal*,⁽¹⁾ it was held by the Privy Council that the provisions of Article 129 of Act IX of 1871, do not interfere with the right which, but for it, a plaintiff has of bringing a suit to recover possession of real property within 12 years from the time when the right accrued. The Calcutta High Court followed the above ruling in *Purna Narain Adhikar v. Hemokant Adhikar*,⁽²⁾ in which plaintiff sued in 1877 to set aside an adoption which was alleged to have taken place twenty years before, and, as heir of the husband of the last Adhikar, who died in 1282, to obtain possession of a certain temple and properties attached thereto which the defendant claimed under the said adoption.

Decision of
P. C. referred
to in (*Note A.*)
(Feb. 1880.)

C. H.
(Feb. 1880.)

(g) A Hindu died leaving two widows, *K* and *R*, of whom *R* brought forth a son in September, 1848. Sometime after, *R* moved the Revenue authorities claiming the vatan lands of the deceased on behalf of the minor son, part of which had been made over to *K* by the Revenue authorities and a part had been placed by Government under sequestration. In February, 1849, the Revenue authorities, declining to recognize the minor as son of the deceased, decided that *K* was entitled to the lands. In March, 1872, *K* adopted a son. In December, 1872, the son of *R* sued for a declaration that he was the son of the deceased and also for setting aside the adoption by *K*. It was contended that the claim was barred under Act XIV of 1859. It was held that the suit not being one to recover property, but to set aside the adoption, was within time under that Act. It was further held that under the circumstances a suit for a declaratory decree would lie, for, the plaintiff, even if his claim to the

Although a
son's suit for
property was
barred, he can
sue for an in-
junction against
intervention of
an alleged ad-
opted son in
Shraddh, &c.

(1) 6 C. L. R., 12 P. C. | (2) 6 C. L. R., 46.

Description of suit.	Period of limitation.	Time from which period begins to run.
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property were barred as against *K*, would yet be entitled to obtain an injunction against any intervention of the adopted son in performing the shraddh or other ceremonies for the benefit of the deceased, or assuming the status of the deceased's adopted son, and, moreover, the Legislature has in Act VII of 1870 and Act IX of 1871, recognized the right of a person to bring a suit to set aside an adoption as a substantive proceeding independent of any claim to property. *Kalova Kon Bhujangrav v. Padapa Valad Bhujangrav*.⁽¹⁾

120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Six years ...	When the right to sue accrues.
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Before applying this Article, court must be satisfied no other Article applies.

(a) This Article is only a reproduction of Article 118 of Act IX of 1871. It is of exceptional application, and before applying it to a case, the court must be satisfied that no other provision of the Limitation Act is applicable.

Does not apply to a suit for money wrongly taken in execution of a decree. (Sept. 1883.)

(b) In *Jagjivan Javherdas v. Gulam Jilani Chaudri*,⁽²⁾ the plaintiff alleged that the defendant in 1861, obtained a decree against the plaintiff's father, and in 1867, attached in execution thereof an allowance called the Chandhri bak, annually payable to the plaintiff's family from the Government treasury; that the plaintiff's father died on the 7th of October, 1869, and that from the moment of his death the plaintiff succeeded to the bak in his own right; that the defendant on the 25th of August, 1875, wrongfully drew from the Government treasury the allowance due for the years 1871-72-73, and 1874-75, amounting in all to Rs. 717-8-4, and prayed that the defendant might be directed to pay the said amount to him. It was held that a suit to recover money wrongly

(1) I. L. R., 1 Bom., 248. | (2) I. L. R., 8 Bom., 17.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

taken under a decree is a suit for compensation to which one year's limitation under Article 29 was applicable and that the same limitation would apply if to the above demand a claim be added to recover damages for the loss of gain or interest upon the money.

(c) The plaintiff claimed as an heir to *N*, deceased, a moiety of moneys, which, at the time of *N*'s death were deposited with a banker, and which the defendant, the other heir to *N*, had received from such banker. It was held that the suit was one for money received by the defendant for the plaintiff's use, to which the limitation provided in No. 62, schedule 2 of Act XV of 1877 applied, and not one to which the limitation provided in No. 120 applied. *Kundun Lal v. Bansi Dhar*.⁽¹⁾ (See *Note D*. under Article 62, p. 385.)

One heir's suit for a moiety of money drawn by another heir of a deceased from banker, does not fall under this Article. (August 1880.)

(d) A suit by a person in the possession of land for a declaration of proprietary right being substantially a suit for possession of immoveable property is not governed by Article 118, but by Article 145 of Act IX of 1871. *Debi Prasad v. Jafar Ali*.⁽²⁾

Suit for declaration of proprietary right to land does not fall under this Article. (June 1880.)

(e) In *Birj Mohan Singh v. The Collector of Allahabad*,⁽³⁾ as President of the Municipal Committee, the Municipal Committee refused on the 26th November, 1878, the plaintiff's lessee's application dated 27th September, 1878, for leave to establish a market and build houses and shops on his land; and on the 22nd November, 1878, the plaintiff addressed a petition on the subject of which no notice was taken. The plaintiff then sued on the 18th April, 1879, for a declaration of his right and for a perpetual injunction restraining the Municipality from interfering with it. It was held by a Full Bench, that the suit was governed by this Article and that the pro-

F. B. Suit against Municipal Committee for a declaration of right falls under this Article. (March 1882.)

(1) I. L. R., 3 All., 170. | (2) I. L. R., 3 All., 40.

(3) I. L. R., 4 All., 340, 102.

Description of suit.	Period of limitation.	Time from which period begins to run.
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Special provision of the Municipal Act applies only to cases where compensation is claimed for wrongful act of the Commissioners in the exercise of powers.

Suit for declaration of partnership right, for dissolution, and for appointment of liquidator and for payment of the share of each out of the surplus, falls under this Article and not under 106. (April 1882.)

visions of section 43 of Act XV of 1873 were applicable only to suits brought against the committee for something done under that Act, in which compensation was claimed. As to the non-applicability of the special limitation in the Municipal Act, the court followed *Manni Kasaundhan v. Crooke*,⁽¹⁾ which was a suit for a declaration of right to reconstruct buildings which the Municipality had directed to be removed, and for compensation in damages. The President of the Municipal Committee of Moradabad *v. Chatri Singh*.⁽²⁾ The same view has been held by a Full Bench in *Chunder Sikhur Bundopad-hya v. Obhoy Churn Bagchi*,⁽³⁾ in which plaintiff sought to recover land taken by the Santipore Municipality. Garth, C. J., in his judgment observes, "as the relief which has been decreed in these suits is for the specific recovery of land, irrespective of any damage for the plaintiff's dispossession, we consider that the 87th section of Bengal Act III of 1864 does not apply." That section, as it seems to us, is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers, in the exercise, or the honestly supposed exercise, of their statutory powers.

(f) In *Harrison v. The Delhi and London Bank*⁽⁴⁾ *T*, *B*, *R*, and *W*, the owners of a certain estate in equal shares, in 1863, entered into a partnership for "the cultivation of tea and other products" upon such estate. In 1864, *H*, *E*, and *I*. joined the firm. In 1870, *H*. died; and in 1871, *T*, purchased his share and those of *E*. and *I*, and in 1873, of *R*. In 1875, *T*. gave the Delhi and London Bank a mortgage on such estate as security for the repayment of money which he had borrowed from the bank osten-

(1) I. L. R., 2 All., 296.

(2) I. L. R., 1 All., 269.

(3) I. L. R., 6 Calc., 8.

(4) I. L. R., 4 All., 437.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

sibly for the purposes of the estate. The bank obtained a decree against him personally for the money in execution of which his rights and interests in the estate were put up for sale on the 20th June 1877, and were purchased by the bank, which obtained possession of the estate in August, 1877. In 1879, *B* and *W*'s executor sued *T* and the bank, claiming a declaration that they were or had been partners with *T* in the estate; that if the partnership should be held to be subsisting, it might be dissolved, or if it had ceased to exist, the date of its termination might be fixed; and that in either event a liquidator might be appointed to take an account, and after realising assets and discharging liabilities, might be ordered to pay them each one-third of such balance as remained. The suit was instituted in the court of a District Judge. He transferred it to the court of a Subordinate Judge. The High Court subsequently transferred it to its own file. It was held that the suit was governed by this Article and not by Article 106. As the partnership was dissolved, time began to run not from the death of *H*, or the purchases by *T* of his share, or those of *E* and *I* in 1871, or of *R* in 1873, but in August, 1877, when the defendant bank took possession of the partnership property.

(g) In *Kirath Chand v. Ganesh Prasad*,⁽¹⁾ plaintiff, as proprietor of a certain "Mohalla," sued on the 28th October, 1878, for $\frac{1}{4}$ of the purchase money of a house purchased by the defendant in execution of his money decree, stating that according to ancient custom the proprietor of the "Mohalla" received $\frac{1}{4}$ of the purchase money when a house in it was sold, whether privately or in the execution of a decree. The house was sold on the 1st July, 1875, and the defendant acknowledged the

Suit as per custom for $\frac{1}{4}$ of purchase money of a house falls under this Article.
(Aug. 1879.)

(1) I. L. R., 2 All., 358.

Description of suit.	Period of limitation.	Time from which period begins to run.
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receipt in full of the purchase money. It was held that this Article applied to the claim.

Promissory note payable on demand at any time within six years, falls under this Article. (Feb. 1882.)

(h) In *Sanjivi v. Errapa*,⁽¹⁾ it was held that a promissory note by which the debtor promised payment of money on demand at any time within six years from the date of the note, contained a special agreement which had not been forbidden by the Limitation Act, and a suit on such a note was governed by this Article and not by Article 73.

Cause of action to recover deposit made for discharge of duty arises when account of charges against it was sent in. (June 1886.)

(i) In *Upendra Lal Mukhopadhyaya v. The Collector of Rajshahye*,⁽²⁾ one Raj Kristo made a deposit as security for the discharge of his duties as manager of an estate under the Court of Wards, which deposit was liable for all sums not accounted for by him. He was removed from his appointment in 1875, and in March, 1878, an account was drawn up and sent to him showing certain sums which he had not accounted for. The Lower Appellate Court rejected the suit as barred under Article 62, on the ground that the suit was not brought within 3 years from 1875. The High Court held that the suit was within time under this Article, although they were not quite sure that the suit would not come under Article 145. They observe "It may be—and authority is not wanting for this view—that the amount was a deposit, which comes under Article 145, and that the plaintiff had 30 years from the date of the deposit. But we think it unnecessary in this case to decide this question in the affirmative, because we are satisfied that no specific rule is applicable which would reduce the period of limitation to less than six years as provided for by Article 120."

The High Court are not quite sure that the case would not come under Article 145.

Suit to enforce one's equitable claim to follow the proceeds of his property in any one's hand, falls under this Article. (Feb. 1884.)

(j) In *Gurudas Pyne v. Ram Narain Sahu*,⁽³⁾ the plaintiff had obtained a decree for money against the widow of one Modhosadan, as representing the latter on

(1) I. L. R., 6 Mad., 290. | (2) I. L. R., 12 Cal., 113.
(3) I. L. R., 10 Cal., -860.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

account of the value of timber converted by Modhosadan to his use. Some of the property of Modhosadan's brother was attached, and was released on the claim of the defendant, who, as Modhosadan's brother, claimed them as his separate property, and the plaintiff's instituted the suit to try his right to recover the amount of his decree by the sale of that property, on the ground that Modhosadan's brother had misappropriated the proceeds of the sale of the timber. The plaintiffs alleged that the defendant was benefited by the aforesaid timber taken by his brother, and after his death himself sold the timber and appropriated the sale-proceeds, and that both the brothers were liable, although the deceased's name alone was mentioned in the former decree. Their Lordships of the Privy Council observing that this was a suit to enforce an equitable claim on the part of the plaintiffs to follow the proceeds of their timber and finding them in the hands of the defendant to make him responsible for the amount, held in February, 1884, that the suit was governed by Article 118 of Act IX of 1871, which corresponds to this Article.

(k) The above ruling was followed in *Muhammad Habihullah Khan v. Safdar Husain Khan*,⁽¹⁾ in which plaintiff and defendant purchased certain property jointly in 1865, and had equal interest in it till 1868, when plaintiff's interest was reduced to one-third. Defendant paid the entire purchase money and incurred expenses of suits for possession, &c., and obtained possession in 1870, and took the profits from that date. Plaintiff did not pay any part of the purchase money up to 1870, and it was not till 1871 that the whole of his share of it was subscribed. The plaintiff sued the defendant for his share of the property and to have an account taken of the profits. It was

Equitable claim against a trustee to have an account of the profits and to recover share, falls under this Article.
(July 1884.)

(1) I. L. R., 7 All., 25.

Description of suit.	Period of limitation.	Time from which period begins to run.
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held that there was a resulting trust in favour of the plaintiff and that the suit was not governed by section 10 or by Article 89, or 62.

Suit by one pre-emptor against another to determine who had better right held to fall under this Article. (Nov. 1884.)

(l) Two suits, to enforce the right of pre-emption in respect of a particular sale having been instituted, the plaintiff in the one first instituted was added as a defendant to the other. It was held, that as regards him, the second suit constituted a claim by one pre-emptor against another for determination of the question, whether the plaintiff or the defendant had the better right to pre-empt the property which was a claim essentially declaratory in its nature, and there being no specific provision for such a claim in the Limitation Act, it was governed by Article 120 of that Act, and the right to sue accrued when the first suit was instituted. *Durga v. Haidar Ali*.⁽¹⁾

Suit for title after dismissal of claim under section 246 of Act VIII of 1859, held to fall under this Article. (July 1883.)

(m) In *Bessassur Bhugut v. Murli Sahu*,⁽²⁾ plaintiff's suit brought in June, 1878, after dismissal on the 15th August, 1877, of his claim petition under section 248 of Act VIII of 1859, was once dismissed for default on the 14th March, 1879. On the 4th March, 1880, the plaintiff again brought a suit to establish his title. It was held that the suit was governed by this Article.

Suit for an alternative claim falls under this Article. (July 1882.)

(n) In *Gunesh Dass v. Gondour Koormi*,⁽³⁾ plaintiffs sued to eject the defendant or in the alternative to compel him to remove the trees. It was held that section 27 of Bengal Act VIII of 1869 will not apply to an alternative claim to which this Article applied.

Suit for tax under Towns Improvement Act falls under this Article, though the debt lies on the Statute. (March 1881.)

(o) In the *President of the Municipal Commission, Guntur, v. Sri Kakulapu Padmarazu*,⁽⁴⁾ the plaintiff sued for rent imposed under the Act for the official year 1876-77. Defendant paid the first instalment and appealed against the assessment on the 29th June, 1876, under

(1) I L. R., 7 All., 167.
(2) I. L. R., 9 Calc., 163.

(3) I. L. R., 9 Calc., 147.
(4) I. L. R., 3 Mad., 124.

Description of suit.	Period of limitation.	Time from which period begins to run.
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section 71 of Act III of 1871, Madras. The second instalment fell due in October, 1876, and the suit was not brought till July, 1880. It was held that, assuming that the debt lies on the Statute, the limitation is six years under this Article. The tax claimed is neither a penalty nor a forfeiture.

Tax claimed is neither a penalty nor a forfeiture.

(p) In *Kedarnath Nag v. Khattur Paul Sritirutno*,⁽¹⁾ the defendant took certain land from the plaintiff under a registered lease which contained a clause prohibiting the defendant from digging a tank on the land without the plaintiff's permission. The defendant having nevertheless constructed a tank without such permission, the plaintiff brought a suit to compel him to fill up the tank, or, in case he should fail to do so, for compensation. It was held that the period of limitation applicable to such a suit is that contained in this Article.

Suit to compel defendant to fill a tank constructed against lease or for compensation, falls under this Article. (May 1880.)

(q) In *Durga Pershad v. Ghosita Gorla*,⁽²⁾ certain *butwara* proceedings were terminated in 1877, and the amount of the land held by the plaintiff in the portion of the estate allotted to the defendant was ascertained. The rent payable was admitted to be at the rate of Rs. 4 per biggah. In 1881, the defendants sued the plaintiff for rent of a larger amount than the plaintiff admitted to be due, and obtained a decree on the 31st May, 1881. On the 20th September, 1881, the plaintiff instituted a suit nominally under the provisions of section 19 of Bengal Act VIII of 1869, for abatement of rent, upon the ground that the defendants were seeking to charge him rent upon a larger amount of land than he actually held. The defendants pleaded that the suit was barred by limitation as being brought more than one year after the cause of action accrued. The court found that the amount of land held by the plaintiff was the amount stated by

Suit for apportionment of rent is not affected by section 19 of the Bengal Act VIII of 1869, but has six years. (Feb. 1885.)

(1) I. L. R., 6 Calc., 34. | (2) I. L. R., 11 Calc., 284.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

him in his plaint, and not that alleged by the defendants. It was held, that as there is no special provision in the Limitation Act regarding a suit of this description, six years is the period of limitation for this suit. A suit of this description is not included in the third schedule ; limitation of the Bengal Tenancy Act VIII of 1885.

Reversioner's suit for compensation drawn by widow's mukurari lessee during pendency of reversioner's suit for land, falls under this Article.

(r) In *Nund Lall Bose v. Meer Aboo Mahomed*,⁽¹⁾ the next heirs of a Hindu widow from whom *B* had obtained a mukurari lease, sued *B* in October, 1871, for possession of the land, but they were not aware of the fact that during *B*'s possession a portion of the land had been taken up by Government, and compensation lodged in the Collectorate. While the suit was pending, *B* in March, 1872, drew the compensation money. After decree, the heirs, in September, 1875, brought a fresh suit for the compensation money. It was held that the claim was not barred although more than three years had elapsed since the money had been drawn out by *B*, and that the suit was governed by the corresponding Article 118 of Act IX of 1871.

A creditor's suit on behalf of himself and other creditors to follow property in the hands of mortgagee under mortgage given by executors held to fall under this Article.

(s) *Greender Chunder Ghose v. Mackintosh*,⁽²⁾ was brought in November, 1876, by creditors of the estate of *A*, on behalf of themselves and all the other creditors of the estate against the executors of the will of *A*. and also against the mortgagee who had obtained the mortgage from the executors in 1863. The object of the suit was to follow in the hands of the mortgagee, the property mortgaged. It was held that the suit was governed by Article 118 of Act IX of 1871 and that cause of action first accrued in 1863 when the mortgage was made.

Suit to establish right to turn of worship of idol held to fall under Article 118

(t) In *Eshan Chunder Roy v. Monmohini Dassi*,⁽³⁾ which was brought in 1875, the plaintiff claimed as heir

(1) I. L. R., 5 Calc., 597. | (2) I. L. R., 4 Calc., 897.
(3) I. L. R., 4 Calc., 688.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

of her husband, a share in a certain taluq, together with exclusive right of worship of an idol *A*, and the right to the worship of an idol *B* for one-sixth of every year from the possession and enjoyment of which she alleged she had been dispossessed by the defendants in 1866. It was held that her claim as to the idol *B* came under the provision of Article 131 of Act IX of 1871, and was not barred; but as to *A*, the claim was governed by Article 118 of the same Act, and not having been preferred within six years, was barred by lapse of time.

where right to exclusive worship of idol held governed by Article 131 of Act IX of 1871.

(u) In a son's suit against mother for father's property, which she managed, supplying son's wants out of the income of the property, it was held that so far as the immoveable property was concerned, the case fell either under Article 120 or Article 144 of Act XV of 1877, schedule 2; and as to the moveable property, under Articles 89 or 90 of the same Act. (See *Note 2-G*, under Article 144.) In *Fuckoruddeen Mahomed Ahsan v. Mohima Chunder Chowdhry*,⁽¹⁾ which was a suit for contribution on the ground that the plaintiff and defendant were jointly liable under the decree in execution of which the plaintiff's property alone was sold, it was doubted whether Article 100 or 118 of Act IX of 1871 applied.

Cases that were held to fall either under this Article or under Article 144 or some other Article.

(v) In a suit between *cestui que trust* and trustee, if the object of the suit is not to recover any property in specie, but to have an account and to recover the balance of money, it must be brought within six years from the time when the plaintiff had first a right to demand it. *Saroda Pershad Chatto Padhya v. Brojo Nanth Bhutachargee*.⁽²⁾ (See *Note G*, under section 10, p. 59, *supra*.)

C. H.
Suit by a *cestui que trust* against a trustee for an account falls under Article 120.

(w) Suit by a pre-emptor to enforce his right against the vendor and vendee under a registered conditional sale deed relating to a fractional share of an undivided Mahal

Suit by pre-emptor to enforce right against vendor and vendee

(1) I. L. R., 4 Calc., 529. | (2) I. L. R., 5 Calc., 910.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

under a registered conditional sale deed relating to a fractional share of an undivided share of a mahal.

has six years under Article 120. *Nath Prasad v. Ram Paltan Ram*.⁽¹⁾ the Legislature appears to have overlooked cases of pre-emption in respect of conditional sale of an undivided share of a mahal. Cause of action to enforce pre-emption accrues only when mortgagee obtains decree for possession. This was followed in *Rasik Lal v. Gajraj Singh*.⁽²⁾ Article 120 was held to apply to suit by pre-emptor against conditional vendee who had obtained decree, declaring sale absolute and giving possession. Cause of action was held to accrue from the date of decree. *Udit Singh v. Padarath Singh*.⁽³⁾ (*Vide Note G*, under Article 10, p.p. 281-282 and 283.)

Suit brought not by a company, but by the official liquidator to recover monies for which calls were made on its shareholders, falls under this Article.

(X) The directors of the *P* company made a call of Rs. 100 per share upon its shareholders on the 1st October, 1882. On the 8th March, 1886, the company was ordered to be wound up by the court, and an official liquidator was appointed. On the 17th March, 1886, the official liquidator filed this suit against the defendant, who was a holder of twenty-one shares in the company, to recover (along with other calls) the amount of the said call of 1st October, 1882. As to this part of the claim, the defendant pleaded limitation. It was held that the suit being brought, not by the company, but by the liquidator, Article 120 of the Limitation Act XV of 1877 applied, and that the claim was, therefore, not barred. In his judgment in *re Whitehouse and Co.*, (9 Ch. Div., 595 at p. 599) Sir G. Jessel explains the liability of a shareholder to contribute under section 38 after a winding up order has been passed:—‘that is a new liability; he is to contribute; it is a new contribution. It is a liability to contribute to the assets of the company; and when we look further into the Act,

Though liquidator is substituted for, and enforces the right of the creditors in right of the company, yet the winding up order calls into existence new rights and new liabilities that did not exist before, and equities which might have been set up against the company cannot prevail against the liquidator as representing the creditors.

(1) I. L. R., 4 All., 218. | (2) I. L. R., 4 All., 414.

(3) I. L. R., 8 All., 54.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII. Six years.	

it will be seen that it is a liability to contribution to be enforced by the liquidator. It is quite true that a call made before the winding up is a debt due to the company, but that does not affect this new liability to contribution.' These decisions thus discriminate claims like the present from suits for calls brought by a company itself where there is no winding up. It is, therefore, not necessary to assume that Article 112 applies to suits not brought by the company itself. As observed in *Balvantray v. Purshotam* (9 B. H. C. R., 99, at p. 111.) 'Limitation Acts are in abridgment of the common law right to sue, which is unlimited as to time, and those Acts being thus restrictive, should receive a strict construction.' "I, therefore, exclude the present suit, which being brought only in the name and behalf of the company, does not fall within the words of Article 112 strictly construed. I hold the Article 120 applicable." *The Parell Spinning and Weaving Company, Limited v. Manek Haji*.⁽¹⁾

These decisions discriminate claims for calls by a liquidator from claims for calls by a company itself.

121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue or in a <i>patni taluk</i> or other saleable tenure sold for arrears of rent.	PART VIII. Twelve years.	When the sale becomes final and conclusive.
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This Article contains in a different form the provisions of Articles 119 and 120 of Act IX of 1871.

(a) The term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last

Meaning of "Incumbrance."

(1) I. L. R., 10 Bom., 483.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

foregoing section ; (see section 161 of Bengal Tenancy Act VIII of 1885.) Section 167 contains procedure for annulling incumbrances under the foregoing sections. A person seeking to obtain the benefit of section 12, Beng. Act VII of 1868, must give some *prima facie* evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section, that is, an incumbrance imposed on the tenure by some one who previously held it. *Koylashbashim Dossee v. Goolmoni Dossee*.⁽¹⁾

Neighbour's encroachment on the estate was held an incumbrance.

(b) The principle under which purchasers of estates at revenue sales acquire such estates in the condition they were in at the Permanent Settlement, is equally recognized by the last Sale Law (Act XI of 1859), as by the laws previous to it, and applies as much to actual encroachments on the talook or estate by neighbours, as to incumbrances or under-tenures created on it by the old proprietor or by his laches. *Goluck Monee Dossee v. Huro Chunder Ghose*.⁽²⁾

Interpretation of the word "avoid."

Auction purchaser is not bound to give notice before suit of his intention to cancel under-tenure.

(c) In *Unnoda Churn Dass Biswas v. Mothura Nath Dass Biswas*,⁽³⁾ it was held, that the interpretation which should be put on the word "avoid" in schedule 2, Articles 119-120 of Act IX of 1871, is, "to do something in exercise of the right of avoidance." Alluding to the decision in this case, which appeared not to have been carefully worded, Garth, C. J., in *Titu Bibi v. Mohesh Chunder Bagchi*,⁽⁴⁾ observes that "all that we really decided in that case so far as I am aware, was, that it is not necessary for the purpose of avoiding an under-tenure or other incumbrance, that the purchaser should give any notice, or to do any act before bringing his suit; and that his suit must be brought within the time prescribed by the Limitation Act."

Assignee of auction purchaser can exercise the same right as purchaser.

(d) In *Koylash Chunder Dutt v. Gubur Ali*,⁽⁵⁾ it was held that the rights which are conferred upon a

(1) I. L. R., 8 Cal., 230.

(2) 8 W. R., 62.

(3) I. L. R., 4 Cal., 860.

(4) I. L. R., 9 Cal., 688.

(5) 22 W. R., 29.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

purchaser at a sale for arrears of revenue under Act XI of 1859, section 37, are capable of being transferred to another person, if the transfer follows immediately upon the sale or within a reasonable time thereafter.

(e) In *Womesh Chunder Goopto v. Raj Narain Roy*,⁽¹⁾ it was held, that the cause of action to *A*, who was a purchaser of an estate free from incumbrance, against *C* who was a trespasser and had encroached on *B* the defaulter, must be taken to accrue at the same time as his, *A*'s, right to turn out under-tenants of the defaulter, viz., from the time of the purchase of the tenure of the defaulter; and the fact that *A* was both talookdar and purchaser, did not prevent him from exercising the same rights as any other purchaser would be entitled to do.

Purchaser's suit is not affected by a trespasser's long possession before purchase.

122.—Upon a judgment obtained in British India, or a recognizance.	Twelve years.	The date of the judgment or recognizance.
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(a) (No. 121, Act IX; clause 11, section 1, Act XIV.) In *Fakirapa v. Pandurangapa*,⁽²⁾ it was held that a suit may be brought in the High Court of Bombay upon a judgment of the Court of Small Causes. It is observed, that plaintiff, in all such suits, should establish that the defendant had not sufficient moveable property, but had real property against which alone execution of such decrees can be had. The Bombay High Court declined to follow *Moonshi Golam Arab v. Curreembux Shaikjee*,⁽³⁾ in which the Calcutta High Court held that no such suit will lie. The Madras High Court in *Mohomed Ghore v. Muster Ally*,⁽⁴⁾ assumed that a suit would lie on a judgment of the Small Cause Court. The point however was not argued, the only question raised being that as to the proper period of limitation. The Bombay High Court in *Merwanji Nowroji v. Ashabai*,⁽⁵⁾ upon a review of all the decisions on the subject, held that no such suit would lie. Section 94 of the Presidency Small Cause

No suit will lie in the court on judgments of Small Cause Courts.

(1) 10 W. R., 15.

(2) I. L. R., 6 Bom., 7.

(3) I. L. R., 5 Calc., 294.

(4) 4 Mad. Jur., 127.

(5) I. L. R., 8 Bom., 13.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Court Act 1882, expressly enacts that no suit shall lie on any decree of such court.

No suit will lie upon the judgment of a court in British India.

(b) In *Bhavani Shankar Shevakram v. Pursadri Kalidas*,⁽¹⁾ it was held that a suit will not lie in the courts of India upon the judgment of any court in British India, and that the only exception to this rule is in the case of judgments of a Court of Small Causes on which suits are permitted to be brought in the High Court in order to obtain execution against immoveable property.

Suit brought in 1877 on a decree of 1848 by the court of the agent for Sirdars directing payment by instalments, held not barred as money was realised up to 1867. (Feb. 1879.)

(c) In *Sakharam Dikshit v. Ganesh Sathe*,⁽²⁾ the Subordinate Judge, to whom, on the cessation of the Sirdarship in the defendant's family, the agent referred the decree for further execution, proceeded with the execution up to the year 1876, when these proceedings were pronounced to be irregular. The plaintiff, thereupon, in the year 1877, filed the present suit based on the decree of 1848. It was held that the period of limitation applicable was that of twelve years from the date of the decree (Act IX of 1871, schedule 2 Article 121), but that the decree should be viewed as analogous to an instalment decree and made as against the defendant in 1867, down to which time the proceeds were irregularly realized,—because, it then, on his father's death, became first operative against him. The court observe that in the case of a decree payable by instalments, as the command of the judge prescribes a term for the performance of the several parts of his order, it is to be construed as becoming a judgment for purposes of limitation as to each instalment only on the day when payment is to be made.

In the case of instalment decree each instalment is to be construed as a decree for the purpose of limitation.

123.—For a legacy or for a share of a residue bequeathed by testator, or for a distributive share of the property of an intestate.	Twelve years.	When the legacy or share becomes payable or deliverable.
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The corresponding Article 122, of Act IX of 1871

(a) The corresponding Article 122, of Act IX of 1871,

(3) I. L. R., 6 Bom., 292. | (2) I. L. R., 3 Bom., 193.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

has been enlarged in its scope in this Article by omitting the word "moveable" and by the additional provision 'or for a distributive share of the property of an intestate.' This alteration has probably been made with reference to the observations of Pontifex, J., in *Treepoorasoundery Dossee v. Debendronath Tagore*,⁽¹⁾ to the following effect: "I should have had considerable doubt as to whether the word 'legacy,' even in clause 122 of the Indian Limitation Act, applied to a share of residue, the words 'distributive share' in that clause applying presumably to undisposed of estate only." Following *Prior v. Harniblane* (2 Y. and C., Ex. Rep. 200) which has never been overruled, "I am therefore bound to hold that clause 122 of the Indian Limitation Act, which applies not only to a legacy, but also to a distributive share of the moveable property of a testator or intestate, includes a share of the residue of a testator's moveable property."

has been enlarged in its scope in this Article.

This Article includes both moveable and immoveable property, and the period of limitation prescribed is twelve years, to be computed 'when the legacy or share becomes payable or deliverable.' Ordinarily they become payable or deliverable from the testator's death, unless the testator wished expressly that the payment of the legacy shall be postponed to some future period after his death, as in the case of *Tagore v. Tagore*, IX B. L. R., 377. But in suits for a distributive share of the property of an intestate, the share becomes deliverable immediately on the testator's death, as held by Mr. Justice Markby, both in cases where he has actually left some property undisposed of by the will, and where he has made an illegal disposition of property which must go to the heir-at-law. This has been stated at page 799, but the High Court have not decided the question. *Hemangini Dasi v. Nobin Chand Ghose*.⁽²⁾

When legacy or share becomes payable or deliverable.

Ordinarily they become payable from testator's death unless he had otherwise directed.

The H. Court have not decided the question.

(1) I. L. R., 2 Cal., 55. | (2) I. L. R., 8 Cal., 788.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VIII.
Twelve years.

Suit to fall under this Article must be to recover legacy from person bound by law to pay it.

(b) This Article applies only to cases in which the property sought to be recovered is not only a legacy, but is also sought to be recovered as such from a person who is bound by law to pay such legacy, either because he is the executor of the will or otherwise represents the estate of the testator. *Issur Chunder Doss v. Juggut Chunder Shaha*.⁽¹⁾

Executor's assent is necessary to complete legatee's title and he is not bound to pay legacy until one year had expired from testator's death.

(c) The assent of the executor is necessary to complete a legatee's title to his legacy. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death. (See Sections 112 and 117 of Act V of 1881, and also sections 292 and 297 of Act X of 1865.)

As to legacy payable on the happening of a contingency, time does not run till contingency happened.

(d) In *Prosunno Chunder v. Gyan Chunder*,⁽²⁾ *R*, by his will, gave the whole of his property to his brothers, making a specific provision of Rupees 4,000 for one of his daughters (the mother of the plaintiffs) which was to remain as amanut in the family treasury, yielding her interest, if, and till, she gave birth to a male child, when she should also have 200 beegahs of land. Shortly after this, the testator died, and the elder of the plaintiffs was born. The mother having since died without drawing the principal or taking the allotment of land, and the manager of the family estate having refused to give the plaintiffs their due, they sued to recover what was left to their mother. It was held that this was a suit for a legacy, and that clause 11, section 1, Act XIV of 1859, applied so far as the claim for the money was concerned, and that the cause of action to the plaintiffs accrued at the time of the birth of the elder plaintiff, when his mother became immediately entitled to the principal sum of money and to the land.

English Law on the subject.

(e) "Until there are assets applicable in due course

(1) I. L. R., 9 Calc. 79.

(2) 13 W. R., 354.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

of administration to the payment of a legacy, the legatee cannot be said to have a present right to receive it, although it may have become payable before; but if there have once been assets sufficient for the payment of the legacy when the right of the legatee as against those assets is barred, it is also barred as against all other assets subsequently becoming applicable. If, however, when any assets become applicable, there is only sufficient to pay a part of the legacy, it is apprehended there can only be a right to receive such part; and that, if assets subsequently become applicable, time will begin to run afresh as against the right of the legatee to receive out of such assets so much of the legacy as the assets before becoming applicable were insufficient to pay. By assets applicable for the payment of the legacy are meant not merely assets in the hands of the executor, but assets which could be got in and so applied, for the legatee has a right to compel the executor to get them in and account for them. Although it is apprehended that this is a correct conclusion, the only case bearing on these points besides those cases just referred to is believed to be *Bright v. Larcher* (27 Beav, 130; affirmed on appeal, 4th De. G. and J. 608; 28 L. J. ch., 837.)”⁽¹⁾

Assets mean not merely assets in the hands of the executor but assets which could be got in and applied to the payment of legacies.

(f) In *Hemangini Dasi v. Nobin Chand Ghose*,⁽²⁾ A, by his last Will and Testament, gave his property to trustees, partly in trust for religious and other purposes, and partly to pay thereout to certain persons and their heirs for ever certain annuities, being fixed portions of the net profits of a certain estate called the Hurro Estate, which amounted to Rs. 3,150. A died in November 1863. On the 11th of August, 1879, the heir of one of the annuitants instituted a suit claiming a share under the Will, and asking for a partition of that share. The plaintiff alleged

Suit by an annuitant's heir claiming a share under a Will and also for a share of property undisposed of.

(1) *Darby and Bosanquet*, 131. | (2) *I. L. R.*, 8 Calc., 788.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Gift of the share of rents and profits held to amount to a gift of a share in the *corpus* of the estate.

Testator's heirs might sue to compel trustees to administer trust properly, though suit to recover property undisposed of by Will be barred.

Two shares ordered to be withheld till sharers paid barred debt their ancestors owed to the estate.

besides, that certain of the trusts and provisions in the will were invalid in law ; that, consequently a large portion of the testator's property remained undisposed of at his death, and she claimed a share of this residue as one of the heirs of the testator. It was held that, under the circumstances, the gift of the share of the rents and profits amounted to a gift of a share in the *corpus* of the estate ; and that in respect of that portion of the plaintiff's claim, the suit was not barred by limitation. It was further held that, where an estate is given by Will to trustees for religious and other purposes, some of which are invalid or fail, the heirs of the testator may be barred by limitation from recovering the portion undisposed of, though they might still bring a suit against the trustees to compel them to properly administer the trusts which had not failed.

(g) In *Lokenath Mullick v. Odoychurn Mullick*,⁽¹⁾ *A* and *B*, two of the sons of one *N*, had been declared in a suit brought to administer *N*'s estate, to be indebted to the estate ; it was also declared in such suit that a certain sum of money should be set apart for the performance of certain religious ceremonies and paid into court. *A* and *B* died without having satisfied their debt. In a suit supplemental to the former suit, the descendants of the sons of *N*, amongst whom were the descendants of *A* and *B* claimed to be entitled to their share in the interest on the funds in the hands of the court, and sought for a division of such accumulation of interest. It was held that, notwithstanding that the debt due from *A* and *B* to the estate was barred, the descendants of *A* and *B* could not be allowed to share in the accumulations of interest in the hands of the court without first satisfying the debt due by their ancestors to the estate.

(1) I. L. R., 7 Calc., 644.

Description of suit.	Period of limitation.	Time from which period begins to run.
124.—For possession of an hereditary office.	<p style="text-align: center;">PART VIII.</p> <p>Twelve years.</p>	<p>When the defendant takes possession of the office adversely to the plaintiff.</p> <p><i>Explanation.</i>—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.</p>

This provision was first introduced in the corresponding Article of Act IX of 1871.

(a) In *Venkatasubbaramayya v. Surayya*,⁽¹⁾ plaintiff's adoptive father was dismissed from the office of Karnam on the 4th of April, 1862, and the plaintiff was appointed in his stead on the 29th April, 1865. On the 25th September, 1865, the plaintiff was dismissed and the second defendant appointed. The present suit, for recovery of the office and land attached, was filed on 21st September, 1877. It was held that the suit was barred, not having been brought within six years from the 25th September, 1865. The court followed *Tamirazu Ramalogi v. Pantina Narsiah*,⁽²⁾ in which it was held that the right to the land being only a secondary claim and dependent upon the plaintiff's title to the office of Karnam, the lapse of six years from the time of the alleged ouster by defendant was fatal to the suit.

Suit brought in September, 1877, to recover Karnamship lost in September, 1865, held to have had six years under Act XIV of 1869.

Right to land is only a secondary claim and dependent on plaintiff's title to the office of Karnam.

(b) In *Papaya v. Ramana*,⁽³⁾ it was held, that it is a general principle that a person filling an office, cannot alienate the emoluments of the office to the prejudice of his successors, and that the alienation made by the present holder is not binding on his successor, who may question the alienation within twelve years from the date when the succession to the office devolves on him.

Alienation of office can be questioned by successor within twelve years from the date that succession devolves on him.

(2) I. L. R., 2 Mad., 283. | (2) 6 Mad., H. C. Rep., 301.

(3) I. L. R., 7 Mad., 85.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Suit to declare plaintiff's liability to officiate as Patil of a village is not prohibited.

(c) A suit for a declaration of the plaintiff's eligibility to officiate as Patil of a village is not prohibited by Act XXIII of 1871. (The Pensions' Act). That Act should receive a strict construction, as being in derogation of the right of the subject to resort to the ordinary Civil Courts. *Gurushidgavda bim Rudragavda v. Rudrajavdatikom Dyamangavda.*⁽¹⁾

P. C.
Plaintiff's suit to enforce his own personal right to manage an endowment was held to fall either under Article 123 or 145 of Act IX of 1871.
(Feb. 1883.)

(d) Where the plaintiff sued to enforce his own personal right to manage an endowment dedicated to religious purposes, there being no question whether or not the property was being applied to such purposes by the manager in possession, the above section was held inapplicable. The possession of the defendant having been adverse for more than twelve years, held that the suit might fall within Article 123 or 145 of the 2nd schedule of Act IX of 1871, in force when the suit was brought. Had it fallen within neither of the above, it would be barred under Article 118. *Balwant Rao v. Puran Mal.*⁽²⁾

Suit for possession of the office of Dharmakarta of a pagoda may be barred by twelve years' adverse possession.

(e) The possession of the office of Dharmakarta of a pagoda, by a female, married and estranged from the family of the founder, was held to be adverse to the surviving male members of the family, and may, after twelve years, extinguish their right to the office. *Manally Chenna Kesavaraya v. Vaidelinga.*⁽³⁾ (See *Note H*, under section 28, p. 264.)

125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan, who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an	Twelve years.	The date of the alienation.
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(1) I. L. R., 1 Bom., 531. | (2) I. L. R., 6 All., 1. | (3) I. L. R., 1 Mad., 343.

Description of suit.	Period of limitation.	Time from which period begins to run.
alienation of such land made by the female declared to be void except for her life or until her re-marriage.	PART VIII. Twelve years.	

(a) (No. 124, Act IX.) A suit brought during the life of a Hindu widow by the presumptive heir, entitled on her death to the possession of the property in which she held her limited estate, to have an alienation by her, declared to operate only for her life, is among the exceptions to the general rule established by decision upon Act VIII of 1859, section 15, viz., that, except in certain cases, a declaratory decree is not to be made unless the plaintiff shows a title to, though he does not ask for, consequential relief. If the widow "executes a conveyance valid for her own interest, but purporting to convey a larger interest to the grantee, it is difficult to see how the reversioner can get any relief except a declaration that the conveyance is valid *pro tanto*. He cannot set the deed aside, because it is partly valid; nor can he affect the possession, which the widow has a right to keep or to give up to another." *Isri Dut Koer v. Hansbutti Koerain*.⁽¹⁾ The cause of action for a declaration that the alienation is void *pro tanto*, is not revived in favour of reversioners who are born after the expiry of twelve years from the date of alienation. *Pershad v. Chedulall*.⁽²⁾ See *Notes* under Article 141.

Persons suing under this section must be the presumptive heir who would be entitled if the widow died at that moment.

Cause of action for declaration is not revived in favour of reversioners born after the expiry of twelve years from the date of alienation.

126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Twelve years.	When the alienee takes possession of the property.
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(a) This Article provides for the accrual of cause of action from the time that alienee takes possession, while the corresponding Article, 125 of Act IX of 1871, made the Statute to run from the date of the alienation. In

Minor can sue within three years of his majority to recover property sold by father.

(1) I. L. R., 10 Calc., 324. | (2) 15 W. R., 1.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VIII.
Twelve years.

Rambul Singh v. Deg Narain Singh,⁽¹⁾ it was held, under Act IX of 1871, that a suit by a Hindu governed by the Mitakshara Law to recover possession of property sold during his minority by his father is within time if brought within three years after he attains his majority.

Order appointing a guardian under Act XL of 1858, extends minority to 21 years, though no certificate be taken out.

(b) Whenever an application is made for the appointment of a guardian under Act XL of 1858, and an order is passed appointing a person to be guardian of the minor, even though no certificate be taken out by the person so appointed, the minor becomes a ward of court, and the period of his minority is extended to twenty-one years. *Grish Chunder Chowdhry v. Abdul Selam*.⁽²⁾ The High Court followed *Chunee Mul Johary v. Brojo Nath Roy Chowdhry*,⁽³⁾ and dissented from *Stephen v. Stephen*,⁽⁴⁾ and *Stephen v. Stephen*.⁽⁵⁾

Cause of action accrues when alienee takes possession of property.

Subsequent birth of a younger brother does not give a new cause of action.

(c) Under the Mitakshara Law, a son may not only prohibit his father from improperly alienating ancestral property, but may sue to set aside the alienation if made. The cause of action to the son accrues when possession is taken by the purchaser. A new cause of action does not accrue, upon the subsequent birth of a younger brother, either to the elder brother alone, or to him, and his brother jointly. *Raja Ram Tewary v. Luchman Pershad*.⁽⁶⁾

127.—By a person excluded from joint-family property to enforce a right to share therein.	Twelve years.	When the exclusion becomes known to the plaintiff.
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Defect pointed out by Garth, C. J., in Article 127 of Act IX of 1871, has been remedied in the Act of 1877,

(a) With reference to the provision in Article 127 of Act IX of 1871, as to the time from which period began to run, Garth, C. J., in *Kali Kishore Roy v. Dhunjoy Roy*,⁽⁷⁾ has observed, "if a plaintiff has been excluded for

(1) I. L. R., 8 Calc., 517.

(2) I. L. R., 14 Calc., 55.

(3) I. L. R., 8 Calc., 967.

(4) I. L. R., 8 Calc., 714.

(5) I. L. R., 5 Calc., 901.

(6) 8 W. R., 15.

(7) I. L. R., 3 Calc., 228.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

fifty years, and he then claims his share and is refused, he would have two years from the time of such refusal to bring his suit; or, in other words, he would have sixty-two years from the time of his exclusion; and if he never claims or is refused, the period within which he may bring his suit appears to be indefinite. This apparent inadvertence has been rectified in the present Limitation Act. See also *Hansji Chhibha v. Valabh Chhibha*,⁽¹⁾ in which the Bombay High Court have made the same remark on Article 127 of Act IX of 1871.

Under Article 127 of Act IX of 1871, time was indefinite.

(b) This Article shortens the period by making it to run from the time the exclusion becomes known to the plaintiff, while the corresponding Article of Act IX of 1871 allowed the period to commence from the time when the plaintiff claimed and was refused his share. In this view of the Article, the Calcutta High Court in *Naraina Khootia v. Lokenath Khootia*,⁽²⁾ held that the plaintiff was entitled to the benefit of section 2 of the Act.

This Article has shortened the period by altering the starting point.

(c) In *Obhoy Churn Ghose v. Gobind Chunder Dey*,⁽³⁾ the plaintiff sued for a share in certain property on the allegation that his ancestor *K* and the defendant's ancestor *R* were uterine brothers, who, while they were living in commensality, purchased the property in question with their joint funds in the name of *R* and that subsequently *K* left his home, and then his daughter, the plaintiff's mother, enjoyed the property jointly with *R* until her death, when the plaintiff, succeeding to his right and interest, applied to have his name registered as a joint proprietor, but his application was refused; hence this suit. The defence was that *R* bought the property in question with his own funds, after he and his brother *K* had separated; that *Radha Mohun*, and afterwards the

Plaintiff to bring his case within this Article should show that property was joint.

(1) I. L. R., 8 Bom., 297. | (2) I. L. R., 7 Calc., 461.

(3) I. L. R., 9 Calc., 237.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Observations of
the Privy Coun-
cil.

defendants, had been in exclusive possession for more than twelve years; and that the suit was barred by limitation. It was held that under section 144, defendant's exclusive possession for upwards of twelve years gave him a *prima facie* right to the property against all the world, and that if the plaintiff wants to bring himself within Article 127, which places him in a more advantageous position than other claimants, he is bound to show that the property is joint. In *Bannoo v. Kashee Ram*,⁽¹⁾ the Lords of the Judicial Committee observe: "In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that all that any one member of the family is found in possession of, belongs to the common stock. That is the ordinary presumption, and the onus of establishing the contrary is thrown on the member of the family who disputes it. Having regard, however, to the state of this family when the present dispute arose, their Lordships think that that presumption cannot be relied upon as the foundation of the plaintiff's case, and therefore, as he seeks to recover property which was in the possession of Ramdyal, and was ostensibly his own at the time of his death, it lies upon him to establish by evidence the foundation of his case, *viz.*, that the property was joint property to which he and his brother Kasho Ram, as surviving members, were entitled." Garth, C. J., observes, that if the rule be otherwise, it would follow "that, however long a Hindu may have been in the exclusive possession of property, moveable or immoveable, he would always be subject to have his title to it questioned by any distant member of his family, who could prove that at some prior period, even 100 years before, their common ancestors were members of a joint-family; and not only so, but that in all such

Observations of
Garth, C. J.

(1) I. L. R., 3 Calc., 815.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

cases the onus of proving that the property was not joint would lie upon the defendant." In *Thakur Prasad v. Partab*⁽¹⁾ the Lower Appellate Court remarked, "it is not enough that the property in dispute should have been joint-family property at some previous period, for so much might be predicated of most property in the possession of a Hindu, but it is essential that it should have been the property of an existing joint-family at the date when the cause of action accrued, and, if this cannot be shown, I hold that Article 127 is inapplicable." Straight C. J., held that the Lower Appellate Court's decision on the question of limitation was correct.

It is essential that property should be the family property of an existing joint family when cause of action accrued.

(d) In *Issuridutt Singh v. Ibrahim*,⁽²⁾ one of the defendants obtaining a decree in April, 1862, against the plaintiff's father for money due on account of rent under a *Ticca* lease taken by the father, attached the right and interest of the plaintiff's grandfather in a certain share in one of the *Mouzas* belonging to the family and caused it to be sold in February, 1866. The purchaser dispossessed the plaintiffs, and by an order of attachment, the under tenants were to cease paying rent to the head of the plaintiff's family from the 13th of January, 1866, being the date of attachment. It was held that the plaintiffs became aware of exclusion on the date of the attachment, and that the claim was barred inasmuch as the suit was brought more than twelve years after the date of the attachment. This was a suit for partition and not a suit to set aside father's alienation, but to obtain a share by partition of a joint-family property, the interest of the father having been sold in execution of a decree.

Date of attachment of rent payable to the head of a family was held exclusion from share.

(e) Corresponding Article of Act IX of 1871, is practically of precisely similar import. It pre-supposes the

Suit for shares by reversioners, who, and their predecessors,

(1) I. L. R., 6 All., 442.

| (2) L. R., 8 Calc., 653.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VIII.
Twelve years.

never held possession is not governed by this Article.

existence of joint-family property and an exclusion from participation in the enjoyment of such property. The word "excluded" implies previous inclusion. When Act IX of 1871 was in force, *Saroda Soondury Dossee v. Doyamoyee Dossee*,⁽¹⁾ was instituted in May, 1877, by plaintiffs, who, as daughters of their deceased mother, claimed a share from their step-sister, the 1st defendant, alleging that the property vested in their mother, who died in September, 1869, and that since they held joint possession of the property, receiving the proceeds according to their respective shares. The Lower Appellate Court found that there was no evidence to show possession in the plaintiffs or their immediate predecessors in title, at any time within twelve years preceding the suit, and rejected the suit as barred. It was held that the suit was not governed by this Article, and that the right of a Hindu to the possession of immoveable property on the death of a Hindu widow, to which Article 142 of Act IX of 1871 referred, must be one in being at the time of the death of the widow and that the determination of such right during her lifetime extinguishes also the right of the reversioner on her death.

Time for partition would not begin to run until plaintiff knows his exclusion.

(f) In *Hari v. Maruti*,⁽²⁾ plaintiff sued his cousin for half share on the 23rd November, 1880. The District Judge finding that the property in dispute was not in the possession of any person from whom the plaintiffs could legally claim it within twelve years previous to the date of the suit, rejected the suit as barred. The High Court reversing the decision, held that time would not run against plaintiff until his exclusion, if he was excluded from the property, had become known to him.

In *Ram Lakhi v. Durga Charan Sen*,⁽³⁾ Garth, C. J., observes: "I conceive that in Article 127 the Legislature

(1) 1 L. R., 5 Cal., 938. | (2) 1 L. R., 6 Bom., 741.

(3) 1 L. R., 11 Cal., 680.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

intended to make an exception from the general rule of limitation in favour of Hindus and others to whom the law of joint-family property more especially applies in this country. Those persons often leave their houses for long periods of time to seek employment in some distant place, and their relatives may take steps to exclude them from their family property without their knowing it. It has therefore been considered right to allow them to bring a suit under such circumstances to enforce their right within twelve years from the time when they first know of their exclusion. But this reasoning would not apply with equal force to strangers, who purchase joint-family property, and ought to make enquiries into the title of their vendors before they make their purchase. That this Article does not apply to such persons, is shown, I think, by the fact that limitation is to run from the time when the exclusion becomes known to the plaintiff. Now, who is meant by the plaintiff in this sentence? The plaintiff there, I conceive, must mean the member of the joint-family who has been excluded from possession, and the expression would not be applicable to a person purchasing from such a member. If it was intended to apply to a purchaser from that member, this strange result would follow:—that the member of the joint-family who sold to the stranger might have known of his own exclusion more than twelve years before the stranger brought his suit; and yet the stranger would not be barred if he, the stranger (who would be the plaintiff) was not aware of the exclusion of his vendor. The stranger would then have twelve years to sue from the time when he was first aware of the exclusion.

(g) In *Nilo Ramchandra v. Govind Ballal and others*,⁽¹⁾ the defendant's great grand-father, and his nephew, who

Reason for exemption from the general rule of limitation in favour of Hindus and others to whom the law of joint-family property applies.

That reason does not apply to strangers purchasing joint-family property.

"Plaintiff" means member of the joint-family and does not include purchasers from such member.

Strange result would follow if plaintiff be construed to imply purchaser also.

Case where defendant's possession of joint-family property

(1) I. L. R., 10 Bom., 24.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

for 35 years held
not to bar plain-
tiffs' suit for
division.

was the plaintiffs' great grand-father, were entitled in equal half shares to a certain vatan property. The plaintiffs' father lived with the defendant and his brothers as one undivided family up to 1885, when the plaintiffs' father having been absent from the village, the defendant's brothers, two in number, executed a deed of partition, whereby they divided the ancestral property into two halves, one-half of which the plaintiffs' father was to receive and the other half was to go to the defendant and his brothers. The deed contained a clause to the effect that the defendant's brothers would manage the plaintiffs' father's share during his absence and hand the same over to him on his return on his paying the expenses of management. In 1873, the plaintiffs' undivided brother sued the defendant and others for a third share on an arrangement said to have been entered into with him by the defendant's brothers, and the suit was rejected as against the defendant as he had not been a party to the agreement. The plaintiffs brought the present suit claiming their share. It was held that the suit was not barred by limitation, as the possession of the share in question by the defendants since 1845, had not been a possession of it as their own property to the exclusion of the plaintiffs or their father and that the plaintiffs' claim was not barred before the Limitation Act of 1871. In this case the Court followed the ruling in *Govindan Pillai v. Chidambara Pillai*,⁽¹⁾ and *Sidhojirav v. Naikojirav*.⁽²⁾

128.—By a Hindu for arrears of maintenance.	Twelve years.	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Do. ...	When the right is denied.

(1) 3 M. H. C. R., 99.

(2) 10 B. H. C. R., 228.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

(a) (No. 128, Article 9; clause 13, section 1, Act XIV.) Act XIV of 1859, clause 13, section 1, provided that suits for maintenance, when the right to receive such maintenance is a charge on the inheritance of any estate, must be brought within twelve years from the death of the person on whose estate the maintenance was alleged to be a charge. On the above section, the Privy Council in *Narayan Rao v. Ramabai*,⁽¹⁾ remarked that by the Hindu Common Law, the right of a widow to maintenance was one accruing from time to time according to her want and exigencies, and that a Statute of Limitation might do much harm if it should force widows to claim their strict rights and commence litigation which, but for the purpose of keeping alive their claims, would not be necessary or desirable.

Act XIV of 1859, gave twelve years from the death of the person on whose estate maintenance was a charge.

Observations of P. C. on the result of the above rule which unnecessarily forced widows to sue merely to keep there claims alive.

(b) Article 128 of Act IX of 1871, provided for a suit by a Hindu for maintenance to be brought within twelve years from the date of refusal of the claim for maintenance. This Article has been split into two (128 and 129) in the Act of 1877, one providing for a suit for arrears of maintenance and the other for a declaration of right to maintenance. In the above Bombay case, it has been observed by P. C., "taking all the circumstances of this family into consideration, their Lordships do not doubt that there was a withholding of this maintenance by the son under circumstances which would amount to a refusal of it."

Article 128 of Act IX of 1871 provided for the running of time from the date of refusal.

It has been split into 128 and 129 in the Act of 1877.

P. C. held, withholding of maintenance to amount to a refusal.

(c) In *Chaganlal and others v. Bapu Bhai*,⁽²⁾ which is a suit to recover arrears of income of a certain vatan connected with an hereditary office, the title to the share having been declared in a former suit, it was held that it was no longer necessary for the plaintiff to establish his periodically recurring right against any person who is

If right to hereditary office be declared, plaintiff can recover arrears of income for twelve years, next preceding the suit.

(1) I. L. R., 3 Bom., 415.

(2) I. L. R., 5 Bom., 68.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VIII.
Twelve years.

B. H.
If right to title be barred, suit to recover arrears on such title is held barred.
(June 1890.)

A Hindu widow
can recover arrears of maintenance not excluded by law of limitation applicable.

bound by that decree; and that being so, there was nothing in the law of limitation which can be construed into a restriction of the plaintiff's right to recover the arrears falling due within the period of limitation, though the plaintiff admitted that he had received no payment for thirteen years, *viz.*, from 1861 to 74, and that his claim for 1861 had been barred on the date of the suit. In this case *Raiji Manor v. Desai Kallianrai*,⁽¹⁾ and *Madvalu v. Bhagvanta*,⁽²⁾ were cited, where it was laid down that the cause of action to establish title and the cause of action to recover arrears which rest on such title are not distinct and independent of each other; so that if the former be barred, even the arrears which may be within the period of limitation cannot be recovered.

(d) Article 128 prescribes twelve years from the time that the arrears are payable while the corresponding Article of Act IX of 1871, made the same period to run from the date of demand and refusal. In *Jivi v. Ramji*,⁽³⁾ plaintiff in June, 1877, sued her brother-in-law for four years' maintenance from 1873 to 1877, alleging that she demanded payment on the latter date. The Lower Court being of opinion that demand and refusal were necessary to give a cause of action, rejected the suit. *Melville, J.*, held that a Limitation Act is not intended to define or create causes of action, but simply to lay down the periods within which existing rights may be enforced. A Hindu widow has a legal right to maintenance, and may recover arrears for any period not excluded by the law of limitation applicable to the suit. In suits coming within the operation of Act IX of 1871, she may recover arrears for any period, unless it appear that there has been a demand and refusal, in which case she can recover arrears for twelve years only from the date of such demand and refusal.

(1) 6 B. H. C. R., 56 A. C. J. | (2) 9 B. H. C. R., 260.

(3) 1. L. R., 3 Bom., 207.

Description of suit.	Period of limitation.	Time from which period begins to run.
130.—For the resumption or assessment of rent-free land.	PART VIII. Twelve years.	When the right to resume or assess the land first accrues.

(No. 130, Act IX; cl. 14, sec. 1, Act XIV.) This Article omits the proviso to Article 130 of Act IX of 1871 and to clause 14, section 1, of the Act of 1859, to the effect "that no such suit shall be maintained where the land forms part of a permanently settled estate, and has been held rent-free from the time of the permanent settlement."

(a) In *Mt. Bunnoo v. Moulvie Ameeroodeen*,⁽¹⁾ it was held under Act XIV of 1859, section 1, clause 14, that a person whose right to resume and assess certain land is acquired by purchase from Government, must date such right, not from the time when he became the purchaser, but from the time when the right first accrued to the Government.

Revenue purchaser's right must date from the time that right first accrued to Government, (under Act XIV of 1859.)

(b) The Talukdari Settlement Officer having assessed rent-free land, on the ground that it had been granted for service, and that service was no longer required, it was held that if the grant was the grant of an office remunerated by the use of land, the right to assess was barred by the possession of a person not claiming under the grantee for a longer period than twelve years after the right to resume accrued, under Act IX of 1871, section 29 (22 of this Act), and Article 130, schedule 2; *Keval Kuber v. The Talukdari Settlement Officer*.⁽²⁾

Twelve years possession by one not claiming under grantee, bars right to assess land granted to an office as remuneration.

(c) In *Protap Chunder Chowdhry v. Shukhee Soon-duree Dasse*,⁽³⁾ A got a decree against B which declared that certain lands in B's possession, alleged to have been lakehraj lands from before 1790, were A's mal lands and liable to assessment. More than twelve years after the date of this decree, A sued to assess the lands. It was held that the suit was not barred by the provisions of this Article.

Suit to assess brought twelve years after decree declaring plaintiff's right to assess held not barred.

(1) 23 W. R., 24.

(2) I. L. R., 1 Bom., 586.

(3) 2 C. L. R., 569.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

In case of Mokurari lease in lieu of maintenance, grantor or successor will be barred for the time of his enjoyment if he does not contest for twelve years grantee's claim to hold in perpetuity.

(d) In *Petambar Baboo v. Nilmony Singh Deo*,⁽¹⁾ it was held that, although a grant of a Mokurrari lease in lieu of maintenance may be resumed by the grantor and his heirs, yet if the grantor or any of his successors receives distinct notice of a claim on the part of the grantee to hold in perpetuity and not subject to resumption and allows twelve years to go by without contesting such claims, he (such grantor or successor) will be barred for the time of his own enjoyment.

A. H. held that a rent-free tenure, the revenue of which the grantor took upon himself to pay, is liable to resumption by his representative. (Dec. 1879.)

(e) In *Jagan Nath Panday v. Prag Singh*,⁽²⁾ the plaintiff claimed possession of a certain land in virtue of a grant thereof to him, not merely of the proprietary right in such land, but of the rents of the same undiminished by the payment of the revenue assessed thereon, which the grantor took upon himself to pay. It was held by the court, that the grant was null and void and liable to resumption with reference to sections 10 of Regulation XIX of 1793 and Regulation XLI of 1795, and section 30 of Act XVIII of 1873 and section 79 of Act XIX of 1873.

Possession as lakheraj since 1st December, 1790, conclusively bars a resumption suit by Government or by purchaser in revenue sale, or by any others.

(f) In *Koylashbashingy Dossee v. Gocoolmoni Dossee*,⁽³⁾ it was held, if a person claiming under a badshahi lakheraj grant made before the 1st of December, 1790, can show that he has held the land as lakheraj since the 1st of December, 1790, this will be a conclusive bar to a suit for resumption, whether brought by the Government or by a purchaser at a revenue sale, or by any other person. That is, in order to prove a grant anterior to the 1st of December, 1790, it is sufficient to give evidence of possession dating back to the 1st of December, 1790. A person seeking to resume lakheraj land must give *prima facie* evidence to show that rent has been paid for that land at some time since the 1st of December 1790.

The law concerned with the subject of lakheraj grants.

(g) Field, J., observes: "Now, Badshahi Lakheraj

(1) I. L. R., 3 Calc., 793. | (2) I. L. R., 2 All., 545.

(3) I. L. R., 8 Calc., 230.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

grants were of three kinds: Firstly, grants made before the 12th August, 1765; secondly, grants made after the 12th August, 1765, but antecedent to the 1st December, 1790; and thirdly, grants made subsequently to the 1st December, 1790. As to the first two classes, it is only necessary to remark, that if a person claiming to hold under a grant falling within either of these two classes can show that he has held the land as lakheraj since the 1st December, 1790, according to the law as it at present stands, this will be a conclusive bar, whether the suit to resume is brought by the Government, by a purchaser at a revenue sale, or by any other person. In order to prove a grant anterior to the 1st December, it is thus sufficient to give evidence of possession as lakherajdar dating back to 1790; see the case of *Sristeedhur Sawunt v. Romanath Rokhit* (6 W. R., 58). Then as to the third class, that is, grants made after the 1st December, 1790, the old Regulation enacted that such grants, whether exceeding or not exceeding 100 bighas, shall be null and void. It therefore follows that apart from the law of limitation, the Government, or an auction purchaser, or a Zemindar is entitled to resume any lakheraj grant made subsequent to the 1st December, 1790. Then we must apply the law of limitation. In the case of Government or any person claiming under Government, Article 149 of the Limitation Act provides the period of 60 years; and it therefore follows that the Government or an auction-purchaser claiming under the Government must sue within 60 years after the cause of action arose to resume lakheraj land, even although held on a grant alleged to have been made after 1790. In the case of a mere auction-purchaser, Articles 121 and 130 would apply, and a purchaser at a revenue sale would have twelve years within which to bring his suit; but it appears to

Three kinds of grants.

1. Made before 12th August, 1765.

2. Made after 12th August, 1765.

3. Made after 1st December, 1790.

To prove grant anterior to 1st December, 1790, it is sufficient to prove possession as lakherajdar dating back to 1790.

Government, or auction purchaser, or a zemindar is entitled to resume grant made subsequent to 1790.

Must sue within 60 years from cause of action.

In the case of a mere auction purchaser Articles 121 and 130 would apply. But purchaser

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

at a revenue sale would have twelve years for his suit.

us that this period of twelve years would be subject to the limitation of 60 years, which would be a bar to Government. In other words, if the period of 60 years expired before the expiry of the twelve years' period in any case in which the purchaser would be subject to the 60 years' rule, such purchaser would only have so much of the twelve years' period as was also covered by the 60 years' period."

Possession for more than twelve years after accrual of the right to assess bars suit for resumption. (March 1880.)

(h) In a suit instituted in 1877, *A* prayed for a declaration that he had a lakheraj title to certain lands: the defendant stated that the lands for a declaration of a title to which *A* now sued formed part of certain lands which had been the subject of resumption proceedings, which were terminated in 1863, by a decree declaring that the lands which were the subject of that suit, including the lands now claimed by *A*, were not lakheraj. It being found as a fact, that *A* had neither been a party to, nor been represented in, the resumption proceedings, that he had been in quiet and undisturbed possession of the lands which he now claimed for more than twelve years before the institution of his suit, and that proceedings had been taken by the defendant calculated to disturb such possession, it was held that *A* was entitled, under section 42 of Act I of 1877, to the declaration prayed for. It was further held that although the onus of proof lay on the plaintiff, it was not necessary for him to prove that the lands claimed by him to be held as lakheraj had been held rent-free from before the date of the permanent settlement; but it was sufficient for him to prove that the defendant was at the time of the institution of the suit debarred by lapse of time from instituting a suit for the resumption or assessment of rent upon the land. *Abhoy Churn Pal v. Kally Pershad Chatterjee*.⁽¹⁾

I. L. R., 5 Cal., 949.

Description of suit.	Period of limitation.	Time from which period begins to run.
131.—To establish a periodically recurring right.	PART VIII. Twelve years.	When the plaintiff is first refused the enjoyment of the right.

(a) (No. 131, Act IX.) Right to receive malikana annually, is a periodically recurring right. *Gopi Nath Chobey v. Bhugwat Pershad*.⁽¹⁾ Rent falling due at certain periods, and the failure to pay it becomes a recurring cause of action. *Poresh Narain Roy v. Kassi Chunder Talukdar*.⁽²⁾ In a suit to recover burial fees the right to which occurred whenever a corpse was brought for burial, the period of limitation was held to be twelve years from the date of the first refusal of the enjoyment of the right under this Article. *Bahar Shah v. Pero Shah*.⁽³⁾

Periodically recurring rights;
1. Right to receive malikana;
2. Failure to pay rent falling due at certain periods;
3. Right to receive burial fees.

(b) "It is not shown that any demand was made for the payment of the allowance on behalf of the respondent until 1872. It is argued that, because in the suit brought by Kolanthai Nachiar, it was pleaded that the payment ceased to be due on the death of Sivasami, it must be taken that the plea amounted to a refusal of the right of the respondent; but, although it may be allowed that the plea was equivalent to a denial of the right as appertaining to any heir of Sivasami, it was not made in answer to a demand by or on behalf of the respondent, and therefore in our judgment the period of limitation is not to be computed from that period. Consequently we hold that the claim is not barred by limitation." In *Ramnad Zemindar v. Dorasami*,⁽⁴⁾ plaintiff sought for a decree holding the zemindari liable for his maintenance at Rs. 700 per mensem, under the terms of an agreement obtained by his father in release of his claim to the zemindari. The High Court held that the right sought to be established was a recurring right and that the plaintiff was entitled to sue within twelve years from the date on which he demanded and was refused the right.

Refusal must be made in answer to a demand by or in behalf of the plaintiff.

Claim for monthly allowance from zemindari under an agreement is a recurring right.

Plaintiff is entitled to sue within twelve years from demand and refusal.

(1) 1. L. R., 10 Cal., 708.

(3) 24 W. R., 385.

(2) 1. L. R., 4 Cal., 661.

(4) 1. L. R., 7 Mad., 341.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Right to worship an idol in turn is a periodically recurring right.

(c) In *Gopee Kishen Gossamy v. Thakoor Dass Gossamy*⁽¹⁾ three brothers, when they separated, arranged amongst themselves that each should worship a common idol every third year for the whole term of forty-five days. It was held, following the decision in *Eshan Chunder Roy v. Monmohini Dassi*,⁽²⁾ that the right to such worship is a periodically recurring right. But right to exclusive worship is not a recurring one. (See *Note T*, under Article 120, p. 478.)

132.—To enforce payment of money charged upon immoveable property. | Twelve years. | When the money sued for becomes due.

Explanation.—The allowance and fees respectively called *mālikāna* and *haqq*s shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.

Act XIV of 1859 allowed three and six years for money suits on mortgage deeds, according as deeds were and were not registered, and twelve years to suits to enforce lien by sale of property.

Article 132 of Act IX of 1871 led the courts to doubt if it applied also to suits to enforce personal remedies.

(a) (No. 132, Act IX.) During the operation of Act XIV of 1859, suit to enforce personal remedy against mortgagor had three years and six years according as the mortgage deed was duly registered or not, and suit to enforce lien by sale of property had twelve years, whether the deed was registered or not. Act XIV of 1859, contained no provision similar to Article 132 of Act IX of 1871, and suits for the enforcement of hypothecation by the sale of property was treated as a suit for the recovery "of any interest in immoveable property" within the meaning of clause 12, section 1, of Act XIV of 1859. Provisions of Article 132 of Act IX of 1871, allowed twelve years "for money charged upon immoveable property," and this led the courts to doubt whether that Article was applicable also to suits to enforce personal remedies secured by a mortgage deed. On this point the

(1) I. L. R., 8 Calc., 807. | (2) I. L. R., 4 Calc., 683.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

decisions of the High Courts and the decisions of one and the same High Court are conflicting.

(b) Act XV of 1877, while retaining Article 132 of Act IX of 1871, with a slight alteration, introduced a new provision by Article 147, giving 60 years to a suit by a mortgagee for foreclosure or sale. This created a doubt whether this special provision is intended to cover all suits brought by a mortgagee, simple or usufructuary, for the realization of debt by the sale of the property mortgaged, or whether the general provision contained in Article 132 as regards suits "to enforce payment of money charged upon immoveable property" must be construed to be subject to the special exemption, as regard suits by mortgagees, contained in Article 147, or in other words, whether the Article was intended to cover also suits to realise money due upon instruments of hypothecation by the sale of the property which had only twelve years' limitation both under Act XIV of 1859, and IX of 1871.

The Transfer of Property Bill of 1877 was before the Legislature at the time of the passing of the Limitation Act, and though it did not become law till 1882, and in a form considerably altered from the Bill of 1877, the latter recognised the distinction between mortgage and charge. Section 100 of Transfer of Property Act enacts "where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, applied to the owner of such property, and the provisions of sections 81 and 82 and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge." Vendor of real property has a right to a charge on the property for the unpaid portion of the purchase money and the vendee has a charge to the extent of seller's interest for the purchase money paid, if

Decisions on its application are conflicting.

The new provision of Article 147 of Act XV of 1877 led to further doubt whether suits to enforce mortgage lien that had twelve years under Article 132 of Act IX of 1871, fell under 147.

Transfer of Property Act recognised distinction between mortgage and charge.

It is doubtful whether the Legislature, by Article 147 had in view the distinction between mortgage and charge.

Vendor of real property has a charge on property for unpaid portion of purchase

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VIII.
Twelve years.

money. Vendee has a charge for his purchase money if sale fails.

Decisions of courts during the operation of Act XIV of 1859, holding suits to enforce personal remedies against mortgagor had three and six years according as the mortgage deed was duly registered or not, and that suits to enforce lien by sale of property had twelve years whether the deed was registered or not.

the sale fails under certain circumstances. Further doubt was, whether by introducing Article 147, the Legislature had in view the distinction between a mortgage and a charge. The decisions upon this point are conflicting.

(c) In *Kadarsa Rantan v. Baviah Bibi*,⁽¹⁾ a Division Bench (Scotland, C. J., Frere, J.) held in April, 1864, that an instrument of hypothecation is a mortgage instrument, and that a suit to recover the money lent must be brought within three years pursuant to Act XIV of 1859, section 1, clause 10. In *Pearee Mohun Bose v. Gobind Chunder*,⁽²⁾ it was held in 1868, that where a creditor sues to recover money advanced by him on the deposit of title-deeds of property, his claim is governed by the limitation applying to debts; but where he seeks to have his lien realized, it is a claim to realize an interest in land to which the limitation of twelve years applies. In *Juneswar Dass v. Mahabeer Singh*,⁽³⁾ which was a suit governed by Act XIV of 1859, the Privy Council held in December, 1875, that in an action brought upon a mortgage bond which combines a personal obligation with the pledge of property, where the claim is founded not upon the contract to pay the money, but upon the hypothecation of the land, and the object is to obtain a sale thereof as against purchasers under a subsequent mortgage bond, the law of limitation applicable to the suit is Act XIV of 1859, section 1, clause 12. If plaintiff sued for money due on an unregistered bond in which lands were pledged as security, it had three years' time under clause 10, section 1, Act XIV of 1859. *Parushnath Misser v. Shaikh Bundah Ali*.⁽⁴⁾ If the bond was registered it would have six years' time under clause 16. *Seetul Singh v. Sooruj Buksh Singh*.⁽⁵⁾ On the above

(1) 2 M. H. C. R., 108.

(2) 10 W. R., 56.

(3) 25 W. R., 84.

(4) 6 W. R., 132.

(5) 6 W. R., 318.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VIII. Twelve years.		

points, see *Nawab Oomrao Begum*,⁽¹⁾ *Raja Kaundan*,⁽²⁾ and *Kristna Row*.⁽³⁾

(d) In *Pestonji Bezonji v. Abdool Rahiman Bin Shaik Budoo*,⁽⁴⁾ the plaintiff sued on the 28th April, 1881, on a mortgage bond dated 16th February, 1870, alleging in the plaint the fact of the mortgage, but praying only for a money decree. The deed contained a personal undertaking to pay. Sargent, J., on the Original Side of the High Court, held in June, 1880, that this Article does not apply to the plaintiff's case, who was too late in bringing the suit for a money decree on the promise to pay the mortgage. He observes that there is no reason to place the plaintiff in a better position in respect of obtaining a money-decree enforceable against the general property of the defendant than any of the ordinary creditors.

B. H. held this Article not to apply to a suit for a mere money-decree against the person of the mortgagor on a mortgage deed. (June 1880.)

There is no reason to place plaintiff in a better position than any ordinary creditor.

(e) In *Lallubhai v. Naran*,⁽⁵⁾ the question for decision was whether this Article was applicable to a suit brought by a mortgagee to recover his debt personally from the mortgagor. Article 147, containing special provision for a suit by a mortgagee for foreclosure or sale, gave room to doubt whether this Article 132 was intended to apply to mortgages at all. The use of the words "enforce payment," &c., also led to the conclusion that this Article was intended to apply only to suits to enforce the mortgagee's claim against the property. A Full Bench being of opinion that the explanation to this Article, that allowances and fees called *malikana* and *haks* be deemed to be money charged upon immoveable property was opposed to the supposition that the Article was intended to apply to suits to enforce payment out of immoveable property, and that notwithstanding Article 147 and the meaning of the word 'charge' in section 100 of the Transfer

B. H. since held this clause to apply to a mortgagee's suit to recover money personally. (Sept. 1882.)

F. B.

(1) 1 N.-W. P. H. C. R., 260.

(3) 2 M. H. C. R., 307.

(2) 3 M. H. C. R., 92.

(4) I. L. R., 5 Bom., 463.

(5) I. L. R., 6 Bom., 719.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Melville, J., observed that words "to enforce payment of money" in this Article cannot be supposed to have been substituted without intention.

M. H. agreed with the above decision, holding that interest may be recovered for twelve years when it is charged on land.
(April 1882.)

Decree is given against defendants, but it does not appear how many years had run against right to personal remedy.

A. H. dissented from the above decision in 1883, but followed it in 1884.

of Property Act, money lent on mortgage was money charged upon immoveable property in ordinary legal phraseology, held therefore a suit by a mortgagee for a money-decree was strictly within the words of this Article. Melville, J., distinguishes this case from Pestonji Bezonji v. Abdool Rahiman Bin Shaik Budoo,⁽¹⁾ on the ground that the latter was decided with reference to a later Act and that substitution of the words "to enforce payment of money" in this Article cannot be supposed to have been made without intention.

(f) Following the above decision, the Madras High Court in Davani v. Ratna,⁽²⁾ which was a suit brought to recover principal and interest due on a mortgage deed, dated 28th July, 1868, executed by 1st defendant and 2nd defendant's father, and also for a decree against the defendants for the balance, if any, after the property is sold, held, that when interest is charged on land, it may be recovered for twelve years. The Judges observed, "with the same hesitation as is expressed by the learned Judges of the Bombay High Court, we agree with that court that Article 132 is applicable." A decree has been given against the defendants also, but it does not appear from the report how many years had run against the right to enforce personal remedy.

(g) In Raghubar Dayal v. Lachmin Shankar,⁽³⁾ a simple mortgage deed dated 5th August, 1872, fell due on the 12th May, 1873. Suit was brought on the 10th March, 1882. The Lower Court gave decree both against the property and person of the debtor. The High Court observing that they are not prepared to follow the decision of the Bombay High Court, held that this Article was not applicable so far as relief against the mortgagor personally

(1) I. L. R., 5 Bom., 463. | (2) I. L. R., 6 Mad., 418.

(3) I. L. R., 5 All., 461.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

was claimed. In *Muhammad Zaki v. Chatku*,⁽¹⁾ which was a suit to recover money due on a mortgage bond, the court followed the view of the law taken by the Bombay High Court in the above Full Bench case, and held that this Article applied to such cases. (See *Note L.*)

(h) In *Ram Din v. Kalka Prasad*,⁽²⁾ the mortgagor gave the mortgagee a pledge of certain moveable property and also gave as a further security his personal bond or covenant. The suit was instituted after a lapse of nearly ten years from the time that the principal and interest became due. Their Lordships observe: "Looking at the previous language with reference to personal suits and at the language of Article 132, (Act IX of 1871) their Lordships think great inconveniences and inconsistencies would arise if they did not read the latter as having reference only to suits for money charged on immoveable property to raise it out of that property. That seems to their Lordships what the Legislature intended, and they are therefore of opinion that the decision of the High Court was right."

P. C. held the corresponding Article of Act IX of 1871, not to apply to personal remedy on a mortgage bond. (Dec. 1884.)

Their Lordships think great inconveniences and inconsistencies would arise if 132 was not held to refer only to suit to raise money out of the real property on which it is charged.

(i) In *Miller v. Runga Nath Moulick*,⁽³⁾ a mortgage deed dated 9th February, 1875, provided that if the mortgagors should fail to pay the money secured thereby according to the terms thereof, the mortgagees should immediately institute a suit and realize the amount due by sale of the mortgaged property, and that if the proceeds of such sale should not be sufficient to liquidate the debt, the mortgagees should realize the balance from the persons and other properties of the mortgagors. It was further agreed that the principal and interest secured by the bond should be repaid in the month of January and February, 1876. The suit was instituted on the 9th

C. H. held this Article not to apply to mortgagee's suit to enforce personal liability, but to apply only to suit to enforce payment of money charged on immoveable property by sale of such property. (July 1885.)

(1) I. L. R., 7 All., 121.

(2) I. L. R., 7 All., 502.

(3) I. L. R., 12 Calc., 389.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

October, 1882, to recover the debt by the sale of the property and the balance, if any, from the persons of the mortgagors. It was held that the bond provided for two remedies in one suit and did not contemplate a second suit being instituted to recover the balance from the persons of the mortgagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and that consequently the cause of action against the persons of the mortgagors accrued upon the date on which the mortgage money became due, and that as the suit was instituted more than six years after that date, the plaintiff's claim was barred by limitation so far as the personal liability of the mortgagors was concerned, and that this Article only refers to suits to enforce payment of money charged upon immoveable property by the sale of such property.

B. H.
Special provision of Article 147 applies to all suits properly brought by a mortgagee for foreclosure or sale, while 132 applies to suits for sale of property to realise a charge not amounting to mortgage.

(j) In *Khemji Bhagvandas Gujar v. Rama*,⁽¹⁾ the plaintiff sued to recover Rs. 90, being the amount of principal and interest due on two bonds (Exhibits 5 and 3,) dated the 25th April, 1861, and 8th October, 1866, respectively, and payable respectively in ten years and two years from those dates. Both bonds purported to be mortgage bonds. The plaintiff prayed either for foreclosure or for sale of the properties mortgaged and for a decree against the defendants personally. The suit was brought on the 10th August, 1882. The defendants contended that the suit was barred by the law of limitation. Both the Lower Courts held that the personal remedy against the defendants were barred; that as neither bond provided, expressly or impliedly, for foreclosure and sale, the plaintiff could not claim the 60 years' period of limitation laid down by Article 147, schedule 2, of Act XV of 1877; and that the plaintiff's claim under the bond of 1866, (Exhibit 3) was barred by Article 132. They awarded the claim under the bond of 1861, (Exhibit 5,) and directed the principal and interest due thereon to be realised by the sale of the property hypothecated. It was held by the

(1) I. L. R., 10 Bom., 519.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

High Court that the special provision of Article 147 of the Limitation Act (XV of 1877) applies to all suits properly brought by a mortgagee, for foreclosure or sale, while the general provision of Article 132 applies to suits for sale by a creditor having a right to realize a charge not amounting to a mortgage. Where immoveable property is made by act of parties, security for the payment of a debt, but no power to sell without the intervention of a court is given to the creditor, there is no transfer to him of an interest in the property until a decree for sale has been made in his favour, and the transaction does not amount to a mortgage. When immoveable property has been so made security for the payment of a debt, there can be no foreclosure by the creditor, unless the terms of the contract admit of it. Birdwood, J., remarks: "It is not contended that the personal claim under Exhibit No. 3, dated 8th October, 1866, is within time."

Where immoveable property is made security for debt without power to sell expressly or implied, the transaction does not amount to a mortgage. (March 1866.)

(k) In *Govind Bhaichand v. Kalnak*,⁽¹⁾ plaintiff filed his suit in January, 1883, to realize by sale of the mortgaged property, a mortgage debt secured by a deed dated January, 1864, which stipulated among other things that, if the debt were not paid off at the expiration of seven years from the date of the mortgage, the same might be realized by the sale of the property. The Lower Court rejected the suit as barred by Article 132, as cause of action arose on the 1st January, 1881. Sargent, C. J., held: "Under the Limitation Act IX of 1871, a suit by the mortgagee to realize his mortgage claim by sale of the mortgaged premises would have fallen under Article 132 of that Act, corresponding with the same Article of the Act of 1877. A special Article, No. 147, however, has been introduced into the latter Act, which provides for suits by a mortgagee for foreclosure and sale, and places them, as regards limitation, on the same footing as suits by the mortgagor, for redemption had already been placed by Article 148, of the Act of 1871. Such suits, therefore, since the passing of the Act of 1877, must be regarded as

B. H. held that Article 132, applies to a suit for sale of property to realize a charge not amounting to a mortgage, and Article 147, applies to all suits by a mortgagee for foreclosure or sale. (March 1886.)

(1) I. L. R., 10 Bom., 592.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

It was held that this suit falls under Article 147 as the mortgage instrument contained an implied if not express power to sell the property on default of payment of money.

C. H. and A. H. held 132 not to apply to a mortgagee's suit to enforce lien by sale of the property hypothecated, while M. H. held otherwise.

Money charged upon rents and profits is money charged upon immoveable property.

Real property comprehends all that would be such according to English Law and possibly more.

P. O. Younger brother's maintenance being a charge on in-

falling under that Article. By the instrument sued on the property in question was mortgaged to the plaintiff's father with an implied, if not express power to sell the same in the event of the mortgage debt not being paid at the expiration of seven years, and the period of limitation was therefore, 60 years from the 1st January, 1871. The suit was, therefore, not barred."

(1) The Allahabad High Court in *Shib Lal v. Gunga Prasad*,⁽¹⁾ held in June, 1884, that a suit by a simple mortgagee to enforce lien by sale of property was not governed by Article 132, but by Article 147. The Calcutta High Court likewise held in August, 1885, in *Brojo Lal Singh v. Gour Charan Sen*.⁽²⁾ But the Madras High Court in *Aliba v. Nann*,⁽³⁾ held in February, 1886, that such suit was governed by Article 132 and not by 147. This question is now before a Full Bench of the Madras High Court, which have reserved judgment.

(m) In *Muhammed Gaki v. Chatku*,⁽⁴⁾ defendant borrowing from plaintiff a certain sum of money, executed a bond mortgaging usufructually his entire right and share in a particular estate, in lieu of the above-mentioned sum; and it was agreed that the plaintiff might realize the debt from the rents and profits of two years, and that, as soon as it had been realized, his possession should cease. It was held that the money borrowed was money charged upon immoveable property, and that the suit to recover it fell under this Article. Their Lordships of the Privy Council in *Maharana Futteh Sangji Jaswant Sangji v. Desai Kullianraji Hakoomutroji*,⁽⁵⁾ ruled that the expression "immoveable property" as used by the Indian Legislature comprehends certainly all that would be real property according to English Law and possibly more.

(n) *Ahmad Hossein Khan v. Nihaluddin Khan*,⁽⁶⁾ was a suit for arrears of maintenance brought by a younger brother against the elder, who had succeeded his

(1) I. L. R., 6 All., 551.

(2) I. L. R., 12 Calc., 111.

(3) I. L. R., 9 Mad., 218.

(4) I. L. R., 7 All., 120.

(5) 13 B. L. R., 265.

(6) I. L. R., 9 Calc., 945.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

deceased father in the possession of the estate. The allowance for the maintenance of a younger member of a family was charged upon inheritance to which the eldest male member alone succeeded. It was held by P. C. that the suit had twelve years.

heritance falls under this Article.

(o) In *Harmukhgaury v. Harisukhprasad*⁽¹⁾ the plaintiff sued in August, 1877, his paternal uncle's widows for a declaration of his right to payment to Desaigiri allowance and to collect the rents of certain lands and also for arrears of allowance and rents. The Lower Appellate Court gave decree for rent also. The High Court disallowed the claim to arrears of rent holding that this Article applies to a case in which the person entitled to money charged upon immoveable property, including haks, claims such money from the person liable originally to pay it, the Inamdars of the village or the Government. The Inamdar or Government or other person collecting the money of the village and paying it to the vatandars is liable for twelve years' claims; but when the money is paid to a person who is one of several persons entitled to it, it ceases after payment to be charged upon immoveable property, and the claim by another of them for his share falls under Article 60.

This Article applies to suit by hakdar against original grantee

(p) In *Chaganlal and others v. Bapubhai*,⁽²⁾ plaintiff had obtained a decree in 1861, declaring his right to a share in the vatan and awarding him his share of the arrears of income for six years. The vatan was connected with an hereditary office, but was not charged upon immoveable property. Under this decree the plaintiff had received his share up to 1860, and he, in the present suit, claimed arrears from 1862 to 1874, alleging that his claim for 1861 had been barred. It was contended that the claim which had only six years under Act XIV of 59, and which

Suit for arrears of twelve years income of a vatan connected with an hereditary office right to which had been already declared by a decree, held not barred though such was not paid for 13 years before suit.

(1) I. L. R., 7 Bom., 191. | (2) I. L. R., 5 Bom., 68.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Cause of action to establish title and cause of action to recover arrears of income resting on such title are not distinct. If title is barred suit for arrears of income is also barred.

Melville, J. observes that his decision is not in violation of any legal principle.

Suit for Government revenue paid, and for declaration that it is a charge on the estate, falls under this Article.

had been barred when that Act was in force, could not be revived by Act IX of 1871. It was held that the period of limitation applicable to the case was twelve years, whether Act XIV of 1859 or IX of 1871 applied. Cause of action to establish title and cause of action to recover arrears of income resting on such title are not distinct and independent of each other. Article 132 requires a plaintiff seeking to establish a periodically recurring right to bring a suit within twelve years from the time that he was first refused the enjoyment of that right. If such plaintiff were to allow the period to elapse, he could not be allowed to gain the object by bringing a suit indirectly for arrears of income falling due within the period of limitation. In this case the plaintiff having already obtained a decree establishing his right, it was held that there was nothing in the Limitation Law which can be construed into a restriction of the plaintiff's right to recover the arrears falling due within the period of limitation. Melville, J., observes that assuming for the sake of argument that the plaintiff might keep his decree for 50 years in his pocket and then sue for arrears, and that there would be practically no such thing as limitation, he does not see that there would necessarily be any violation of the legal principles in the conclusion he has arrived at in this case.

(q) In *Ramdutt Singh v. Horakh Narain Singh*,⁽¹⁾ the plaintiff sued for money he paid between 1866 and 1878, as revenue of a mouza belonging to defendant. The plaintiff held the other mouza of the defendant's estate under a lease by which he was to pay the revenue of them. The plaintiff's allegation was that the defendant having neglected to pay the revenue on the mouza not included in the lease, he (plaintiff) was compelled to

(1) I. L. R., 6 Cal., 549.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

pay it. It was held that the suit was governed by this Article and not by Article 99.

(r) In *Hurmuza Begum v. Hirday Narain*,⁽¹⁾ the plaintiff, the purchaser of a seven-anna share of the malikana rights in a certain mouza, sued in February, 1878, the defendants, the purchasers of the remaining nine-anna share of the malikana, to recover the malikana due on seven-annas share from 1873 to 1877, the whole having been collected by the defendants. The defendants pleaded limitation. It was held that malikana is an annual recurring charge, and that the claim is not barred as the sum sued for became due within twelve years preceding the suit.

Malikana being an annual recurring charge may be sued for within twelve years.

(s) In *Sirdar Khan v. Buldeo Singh*,⁽²⁾ the plaintiff was the mortgagee of the property confiscated in the mutiny. He asserted his lien in May, 1859, and when the property was afterwards granted to the defendants, it was granted subject to any claims that might be made in respect of it, and they, in June, 1859, executed an agreement which had reference to the plaintiff's claim, binding themselves to take the risk of any lien subsisting on the property. In July, 1861, they were informed by the Collector that they were answerable for the plaintiff's lien. The plaintiff sued the defendants to enforce his lien against the property. It was held that the suit was not barred by limitation under Act IX of 1859.

Suit to enforce lien on confiscated property is not affected by limitation contained in Act IX of 1859.

(t) In *Ganpat Pandurang v. Adarji Dadabhai*,⁽³⁾ Westrop, C. J., observes, "we think that the intention of the parties to it was that both interest and principal should be charged upon the property mentioned in it, and the subject of the title-deeds previously deposited, and, therefore, that neither the interest nor the principal is barred,

Period of limitation applicable to principal debt applies to interest when both are charged on real property.

(1) I. L. R., 5 Calc., 921. | (2) 6 N.-W. P. H. C. R., 99.

(3) I. L. R., 3 Bom., 332.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

There is no provision in IX of 1871, with respect to interest on mortgages or other incumbrances as in the English statute.

When a bond provides for payment of stipulated interest even after due date it is enforceable.

In the absence of an agreement fixing rate of interest after due date, court must determine what rate would be reasonable.

whether regard be had to Article 132 or Article 149. *Hunter v. Nockalds* (1 Mac. and Gor. 640; S. C., 14 Jur., 256; 19 L. J., N. S. Ch., 177; 18 *Ibid*, Ch. 407) was referred to; but we have no such provision in Act IX of 1871, with respect to arrears of interest on mortgages or other incumbrances, as the English Statute 3 and 4, Wm. IV, c. 27, s. 42, on which that case turned. (See *Note 1*, at p. 144, of Sugden's Real Property Acts, ed. of 1852). In *Davani Ammal v. Ratna Chetti*,⁽¹⁾ it was held that in suits to recover the principal and interest of a loan secured by a mortgage of immoveable property, interest for twelve years is recoverable by virtue of Article 132 of schedule 2, of the Indian Limitation Act 1877.

(1) *G* gave *B* a bond for the payment of certain money within a certain time with interest, at the rate of $1\frac{1}{4}$ per cent. per mensem, in which he agreed that in case of default, the obligee "should be at liberty to recover the principal money and interest from his person and property," and mortgaged "his four-anna share in mouza *K*, until payment of the principal money and interest." It was held, that the bond contained an express contract for the payment of interest after due date at the rate of $1\frac{1}{4}$ per cent. per mensem, and that such contract was enforceable. *Semble*—that, where there is no express agreement fixing the rate of interest to be paid after the date a bond becomes due, an agreement to pay at the rate of interest agreed to be paid before such date, cannot be implied, but the court must determine what would be a reasonable rate to allow. In such a case the rate agreed to be paid before such date may ordinarily be regarded as the rate to be allowed after such date, provided that the rate agreed to be paid before such date is not excessive. *Baldeo Panday v. Gokal Rai*.⁽²⁾

(1) I. L. R., 6 Mad., 417. | (2) I. L. R., 1 All., 603.

Description of suit.	Period of limitation.	Time from which period begins to run.
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	PART VIII. Twelve years. Do. ...	The date of the purchase.
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration.		The date of the purchase.

(a) In these Articles and in section 10 of the Act of 1877, the Legislature have omitted the words "good faith" used in the explanation to section 10, and in the corresponding Articles of Act IX of 1871. This appears to have been made with reference to the observations of Green, J., in *Manik Lal Atmaram v. Manchershhi*,⁽¹⁾ in which he remarked that the Indian Limitation Act was less liberal than the English Statute in the protection of a purchaser for value. As Act IX of 1871 required a purchaser from trustee to prove not only that he gave value, but that the purchase was *bona fide*, while lapse of time under the English Act protected him whether purchase was *bona fide* or not. It has been decided by the highest tribunal in England, that a vendee, for value of lands devoted to charity, might rely upon limitation as a defence. (See *Note D*, under section 10, p. 51, and *Note G*, pp. 54, 55.)

The words "good faith," used in Act IX of 1871, have been omitted in the Act of 1877.

Act IX of 1871 required a purchaser to prove not only he gave value, but that purchase was *bona fide*.

(b) In *Bhagwan Sahai v. Bhagwan Din*,⁽²⁾ the Allahabad High Court held:—It was not intended that property

This Article is intended to protect a purchaser who believes that his vendor had power to

(1) I. L. R., 1 Bom., 281. | (2) I. L. R., 9 All., 97.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

sell absolutely and not the interest of a mortgagee. (Nov. 1886.)

which would pass on the sale by a mortgagee of his interest should come within the scope of Article 134, schedule 2, of the Limitation (Act XV of 1877.) That Article was intended to protect, after the expiration of twelve years from the date of a purchase, a person who, happening to purchase from a mortgagee, had reasonable grounds for believing and did believe, that his vendor had the power to convey, and was conveying to him an absolute interest and not merely the interest of a mortgagee: The court referred to *Radanath Doss v. Gisborne and Co.*,⁽¹⁾ *Piarey Lal, v. Saliga*,⁽²⁾ and *Kamal Singh v. Batul Fatima*.⁽³⁾

Suit by son as trustee for trust property sold by court for father's debt in execution of the decree obtained against son as representative of his father and brother.

(c) In *Rupa Jagshet v. Krishnaji Govind*,⁽⁴⁾ the owner of certain land assigned it in 1870, by a deed of gift, to the plaintiff and his deceased brother and to their descendants in perpetuity in consideration of their performing the worship of the donor's family God. In 1874 and 1875, the right of the plaintiff's father and brother (deceased) were sold by auction in execution of money decrees obtained against the plaintiff as their representative. On the 10th June, 1881, this suit was brought to recover the property from the purchaser. It was held that the suit was not barred until twelve years from dispossession, there being no necessity to set aside the sale. The Hindu Law, unlike the English Law with respect to charities, makes no distinction between a religious endowment having for its object the worship of a household idol and one which is for the benefit of the general public.

Hindu Law makes no distinction between religious endowment to a household idol and to one which is for the benefit of the general public.

Mortgagee's suit for property purchased by himself under power of sale.

(d) In *Purmanand Das Jiandas v. Jamnabai*,⁽⁵⁾ the plaintiff, as assignee of a mortgage of March, 1867, of an undivided moiety of a land and house thereon sold the

(1) 14 M. I. A., 1.

(2) I. L. R., 2 All., 394

(3) I. L. R., 2 All., 460.

(4) I. L. R., 9 Bom., 169.

(5) I. L. R., 10 Bom., 49.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

undivided moiety by public auction in April, 1872, and bought in the name of his brother-in-law. The mortgagor assented to this purchase in August, 1882. The plaintiff sued for possession of his moiety. It was held that obstruction by persons, who, while claiming a lien on the property, admitted the mortgagor's title to the property, was not adverse possession as against the mortgagee's title as purchaser. It was further held that a mortgagee purchasing the mortgaged property with the consent of the mortgagor, under the power of sale contained in the mortgage deed, acquires an unimpeachable title derived from the power of sale, which is however distinct from and overrides his title as a mere incumbrancer: the effect of such purchase being to vest the ownership of, and the beneficial title to, the property for the first time in himself, who had been previously a mere incumbrancer.

Mortgagee by purchase acquires an unimpeachable title which is distinct from his title as a mere incumbrancer.

135.—Suit instituted in a Twelve years. | When the mortgagor's right to possession determines.

Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	
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(a) In *Ghinarain Dobey v. Ram Monaruth Ram Dobey*,⁽¹⁾ it was held that under the Limitation Act of 1871, a mortgagee who has taken foreclosure proceedings may bring a suit for possession at any time within twelve years from the expiration of the year of grace. Article 135 of schedule 2 does not apply to such a case. This decision was followed in *Bromhomoyi Dasi v. Jugobundhu Ghose*,⁽²⁾ in which default was made on the 12th June, 1859, by the mortgagor under a mortgage, which stipulated that if default should be made on that date, the mortgagee should become the owner of the mortgaged property by

Under the Act of 1871, mortgagee who has taken foreclosure proceedings may sue for possession at any time within twelve years from the expiration of the year of grace.
(May 1880.)

Another case of C. H. dated.
(Dec. 1880.)

(1) C. L. R., 7, 580. | (2) C. L. R., 7, 583.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Right to possession becomes complete after decree for possession is obtained.

purchase and entitled to possession. The mortgagee in October, 1866, foreclosed the mortgage under Regulation XVII of 1806, the year of grace expiring in the following October, and on the 10th of April, 1878, or more than twelve years from the date of the default, sued for possession of the property. It was held that the suit was not barred as the right to possession did not become complete until after the decree for possession.

Mortgagee's right to possession under a deed expressly allowing him to take possession on default commences from default. (May 1883.)

(b) Under a mortgage deed, which by its express terms allows the mortgagee a right to take possession upon default by the mortgagor in payment of the mortgage money, the mortgagee, as absolute owner of the property, has twelve years from the time at which his right to possession commences, in which he may bring his suit for possession. But where there is no such stipulation in the mortgage, the right of the mortgagee to take possession does not accrue until after the expiration of the year of grace. *Modun Mohun Chowdhry v. Ashad Ally Beparee.* (1)

In the absence of such stipulation right accrues at the expiry of the year of grace.

P. C.
Second mortgagee in possession under decree for it, dispossessed by first mortgagee by decree, can recover possession within twelve years from date of redemption by mortgagor. (Nov. 1876.)

(c) Second mortgagee obtained a decree for possession and obtained possession of property in 1846. The first mortgagee subsequently brought a suit as such, for possession against the mortgagor, and the second mortgagee obtained possession in 1847. In 1870, the heirs of the mortgagor having paid the debt due to the first mortgagee and resumed possession, whereupon the second mortgagee's heirs applied to be restored to possession in execution of the decree already obtained in 1846. This application having been rejected on the ground that that decree had been already fully executed, the heirs of the second mortgagee brought a suit to recover possession. The High Court rejected the suit as barred, remarking that no right of action accrued to the second mortgagee by reason of the satisfaction of the

(1) I. L. R., 10 Cal., 68.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

debt of the first mortgagee and recovery of possession by the mortgagors or their heirs. Their Lordships of the Judicial Committee, reversing the decision of the High Court, held that the second mortgagees were entitled to possession and that their cause of action accrued and limitation ran against them from the time when the heirs of the mortgagor resumed possession. *Narain Singh and others v. Shimbhoo Singh and others.*⁽¹⁾

P. C. held that cause of action accrued from the time when the heirs of the mortgagor resumed possession.

(d) In *Shurnomoyee Dasi v. Srinath Das*,⁽²⁾ certain property situate in the District of the 24-Pergunnahs was mortgaged by the owner thereof on the 17th November, 1865, to secure the repayment of money lent with interest on the 17th February, 1866. The mortgagor and mortgagee were Hindus, and the mortgage was in the ordinary form of an English mortgage of real property. After the date of mortgage and before the 15th of February, 1872, the mortgagor sold various portions of the mortgaged property. On the 15th of February, 1872, the mortgagee filed a foreclosure petition in the court of the Judge of the 24-Pergunnahs under Regulation XVII of 1806. Notice of the petition was served on the mortgagor alone. Neither principal nor interest was paid by the mortgagor, and on the 6th September, 1882, the assignee of the mortgagee filed a suit for foreclosure against the mortgagor, and the purchasers of the various portions of the property under the provisions of the Transfer of Property Act, praying for foreclosure and sale. The mortgagor's right to possession determined on the date of default, namely, February, 1866, and the suit for possession would be barred on the 17th February, 1878. The suit was barred against the mortgagor himself. It was held that as against the purchasers from the mortgagor the suit was barred under this Article.

Suit by a mortgagee's assignee for possession against the mortgagors' vendees, held barred under this Article. (Nov. 1885.)

(1) I. L. B., 1 All., 325. | (2) I. L. B., 12 Cal., 614.

Description of suit.	Period of limitation.	Time from which period begins to run.
136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	<p style="text-align: center;">PART VIII.</p> <p>Twelve years.</p>	When the vendor is first entitled to possession.

C. H.
Suit against a vendor himself when he recovers possession does not fall under this Article but under Article 144. (July 1885.)

A. H. held either this Article or 144 applied to a similar case. (Feb. 1880.)

(2) In *Ram Prosad Janna v. Lakhi Narain Pradhan*,⁽¹⁾ a vendor who was at the time out of possession of certain immoveable property, sold a share in it to a purchaser by a kobala; after the date of the sale, the vendor recovered possession, and the purchaser, within twelve years of the vendor having so recovered possession, but more than twelve years after he had been originally dispossessed, instituted a suit to obtain possession of the share covered by the kobala. It was held by the High Court that this Article is not intended to apply to a suit brought against the vendor himself upon his recovering possession and that the suit was governed by Article 144. In *Sheo Prasad v. Udai Singh*,⁽²⁾ which is a suit of a similar nature, A. H. held, that either this Article or Article 144 was applicable. In this case the plaintiff obtained on the 22nd October 1865, a sale deed from the defendant who then was not in possession, although his title to it had been declared by a decree dated 9th August, 1864, against which an appeal was pending before the Privy Council. The defendant obtained possession of a larger portion of the property on the 24th February, 1870, and of the remainder on the 23rd August, 1872. The deed provided that the vendee should remain in possession from the date that the vendor obtained possession in execution of his decree. The Lower Court rejected the suit as barred under Article 113.

(1) I. L. R., 12 Calc., 197.

(2) I. L. R., 2 All., 718.

Description of suit.	Period of limitation.	Time from which period begins to run.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	PART VIII. Twelve years.	When the judgment-debtor is first entitled to possession.
<p>(a) In <i>Ram Lakhi v. Durga Charan Sen</i>,⁽¹⁾ plaintiff sued for a third share which he purchased from a Hindu widow who professed to have inherited it from her husband who was a member of a joint-family. The District Munsif rejected the suit as barred. The Lower Appellate Court decreed the property on the ground that the defendants had failed to show under Article 127, that exclusion from the joint-family property was known to the vendor more than twelve years ago. The High Court was of opinion that any stranger purchasing joint-family property from a member of the family is in the same position, as regards limitation, as the purchaser of any other property, and that in Article 127, the Legislature intended to make an exception from the general rule of limitation in favor of Hindus and others, to whom the law of joint-family property specially applies, and that the word "plaintiff" in Article 127 means the member of the family and was not intended to apply to a purchaser from that member, and held that the material issue was, when did the possession of the defendant become adverse to the plaintiff or to the person under whom he claims by purchase. Garth, C. J., observes that the onus lies upon the purchaser to show that the exclusion, if any, took place within twelve years of the institution of the suit.</p>		
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.	Twelve years.	The date of the sale.

Suit by purchaser when vendor is out of possession, falls under this Article.

Any stranger purchasing joint-family property is in the same position as purchaser of any other property as to limitation.

"Plaintiff" in Article 127 means the member of the family and was not intended to apply to a purchaser from a member of the family.

Suit by purchaser when vendor is out of possession, falls under this Article.

Any stranger purchasing joint-family property is in the same position as purchaser of any other property as to limitation.

"Plaintiff" in Article 127 means the member of the family and was not intended to apply to a purchaser from a member of the family.

(1) I. L. R., 11 Cal., 680.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VIII.
Twelve years.

In an auction purchaser's suit for possession, defendant's vendor's possession after private sale out and out held adverse to the vendee.

(a) In *Anand Coomari v. Ali Jamin*,⁽¹⁾ the defendant executed a conveyance of his property to one Abdul Ryhim, on the 26th September, 1867, and acknowledged its execution on the same day to the registrar, who registered it on the 19th October, 1867. The vendee never entered into possession. The plaintiff, in execution of his decree obtained against Abdul Ryhim, purchased the same property in Court sale on the 14th November, 1874, and sued the defendant on the 25th September, 1879, for possession. The court held that the plaintiff's claim was barred, observing that the case of *Tew v. Jones* was "an authority for holding that in the case of a sale out and out, the vendor remaining in possession, that possession is adverse to the purchaser. That construction is in harmony with the inference to be drawn from Articles 136 and 137 of the Limitation Act."

This construction is in harmony with the inference to be drawn from Articles 136 and 137.

Auction purchaser might sue for possession on failing in a summary procedure. (Feb. 1883.)

(b) In *Jagan Nath v. Baldeo*,⁽²⁾ plaintiff purchased the property in auction in October, 1873. The same property was attached for another decree against the debtor, and the plaintiff's objection petition was disallowed and the property was sold and purchased by a third party. The plaintiff brought the present suit in July, 1881, for possession against the judgment-debtor, who held possession, and against the subsequent auction purchaser. It was held by a Full Bench in February, 1883, that the suit was maintainable. Whether an auction purchaser took delivery or not of possession of the property, his suit for possession is not barred by reason of the Civil Procedure Code containing special provisions for putting an auction purchaser in possession in execution proceedings. *Sevu v. Muttusami*.⁽³⁾

C. P. C. containing provision for delivery of possession in execution does not bar a suit for possession.

B. H. Vendee of auction-purchaser might likewise

(c) In *Govind Ragunath v. Govinda Jagoji*,⁽⁴⁾ the

(1) I. L. R., 11 Calc., 229.
(2) I. L. R., 5 All., 305.

(3) I. L. R., 10 Mad., 53.
(4) I. L. R. 1 Bom., 500.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

plaintiff, as vendee of an auction purchaser's right, sued for possession. The Lower Appellate Court rejected the suit as it thought the transfer before the purchaser had obtained possession was against public policy and justice. The High Court held in November, 1876, that there was nothing in either the Hindu or the English Law which debars a third person from taking an assignment of such property from the auction-purchaser although it has not been reduced into possession by him. In *Seru Mohun v. Bhagoban Din Pandey*,⁽¹⁾ auction purchaser, who purchased on the 21st December, 1878, sold it to the plaintiff on the 5th July, 1879, who, failing to get possession by enforcement of the courts' order, brought this suit for possession. The Lower Court rejected the suit as barred by Article 13. It was held that the suit was maintainable under this Article. *Iswar Pershad Gurgo v. Jai Narain Giri*,⁽²⁾ was brought by the plaintiff as assignee of the heir of the certificated auction-purchaser of certain real property sold for a decree against the defendant on the 22nd April, 1876. The plaintiff's father was the real purchaser and the certificated purchaser was a benamidar for him. The Lower Appellate Court rejected the suit on the ground that the suit was not maintainable. The benami purchaser obtaining a sale certificate in May, 1876, applied for possession in October, 1876. The application was opposed by the debtor's wife and the objection was overruled in March, 1877, and possession was ordered to be given on the same date. The debtor's wife's regular suit was disposed of in June, 1879, when the auction purchaser died without taking possession under the order of March, 1877. The plaintiff after taking an assignment from the purchaser's son in May, 1880, stating in the conveyance that the purchase was benami for the

sue for possession.
(Nov. 1876.)

C. H.

C. H.

Application for possession was allowed in March, 1877, setting aside debtor's wife's objection, and her suit was rejected in June, 1879.

(1) I. L. R., 9. Calc., 602. | (2) I. L. R., 12 Calc., 169.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

The order for delivery of March, 1877, was set aside by the court on the defendant's plea of limitation. Held the regular suit would lie.

plaintiff's father obtained from the court in March, 1881, a sale certificate and an order for possession. The defendant pleaded that the application was barred and the court set aside the order for delivery. The plaintiff instituted the suit in January, 1883, for possession. It was held the suit will lie when it is shown that an attempt has been made to obtain possession in execution proceedings and that such attempt has been unsuccessful. The court remanded the suit to be decided on the merits.

Auction purchaser's suit brought 14 years after purchase, held not saved by symbolical possession or momentary and partial possession.

(d) In *Shoteenath Mookerjee v. Obhoy Nund Roy*,⁽¹⁾ the plaintiffs on the 31st January, 1863, purchased a half share in a certain house at a sale in execution of a decree, but took no steps at the time to take possession of it. In 1869, the Nazir of the court was directed to put them into possession, and he gave them symbolical possession. Afterwards, in 1871, the plaintiffs, again with the assistance of the Nazir, entered upon and for the space of about a minute remained in possession of one of the rooms in the house, until they were turned out by the defendants. On the 18th November, 1876, the plaintiffs filed a suit praying for a declaration of right, and for a partition, and to be put into separate possession of the share that might be allotted to them on such partition. It was held, that neither the symbolical possession given to them in 1869 by the Nazir nor the momentary and partial possession which they had obtained in 1871, was sufficient to save limitation; and that as their suit was brought on the 18th November, 1876, more than twelve years after the 31st January, 1873, when they first became entitled to possession, it was now barred by limitation.

This is the case of a dwelling house of which actual possession might have been given.

Auction purchaser's minor son's suit for lands after formal possession was had.

(e) In *Koonjo Mohun Dass v. Nobo Coomar Shaha*,⁽²⁾ A purchased the right, title, and interest of B, a judg-

(1) I. L. R., 5 Calc., 331. | (2) I. L. R., 4 Calc., 216.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

ment debtor, in certain lands, at an auction sale in execution of a decree in October, 1863, was put in formal possession in January, 1865, and died without ever having obtained *actual* possession. After his decease a suit was filed in September, 1875, on behalf of his minor son *C*, against the defendants who obstructed his taking actual possession. It was held, that if *B* was in possession at the time of the sale, that is to say, within twelve years before the institution of the suit, *C* was not barred by limitation.

It was held that if judgment-debtor was in possession within twelve years before suit, claim was not barred.

(f) If the symbolic possession obtained by an auction purchaser through court become infructuous, he is entitled to bring a suit to obtain actual possession, but is bound to bring it within twelve years from the date of purchase under this Article. *Krishna Lall Dutt v. Radha Krishna Surkhel*.⁽¹⁾ Where in execution proceedings symbolical possession is given to a person, such possession amounts to an actual transfer of possession as between the parties to the suit. But such possession has no such operation against third persons who are not parties to the suit. *Ramit Singh v. Bunwari Lal Sahu*.⁽²⁾ See also *Juggobundhn Mukerjee v. Ram Chunder Bysack*.⁽³⁾

On symbolic possession proving infructuous, purchaser might sue within twelve years from the date of purchase.

Symbolic possession amounts to actual transfer of possession as between parties to suit, but it does not operate so against third person.

(g) In *Umma Shankar v. Kalka Prasad*,⁽⁴⁾ the purchasers of property sold in execution of a decree, having been resisted in obtaining possession of the property by a person claiming under a mortgage from the judgment-debtor, sued for possession by avoidance of the mortgage, alleging that the same was collusive and fraudulent. The plaintiffs did not ask for the cancellation or setting aside of the instrument of mortgage which was found to be a colourable transaction. It was held that the avoidance of the mortgage does not necessarily involve the cancellation of the instrument and this suit which is for

Purchaser's suit for possession by avoidance of mortgage, falls under this Article.

Suit for possession of property is not affected by the incidental question whether claim can be defeated

(1) I. L. R., 10 Cal., 402.

(2) I. L. R., 10 Cal., 999.

(3) I. L. R., 5 Cal., 582.

(4) I. L. R., 6 All., 76.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

by the existence of a mortgage in defendant's favor.

possession of real property is not affected by the incidental question being raised whether the claim to possession can be defeated by the existence of a mortgage in favor of the defendant. In this view the court followed the decision of the Privy Council in *Raj Bahadur Singh v. Achambit Lal*.⁽¹⁾ The above decision was followed in *Ikram Singh v. Intizamali*,⁽²⁾ in which purchasers in court sale sued to set aside a usufructuary mortgage deed executed by the judgment-debtor before sale and for possession of property on the ground that the mortgage was collusive and fraudulent.

139.—By a landlord to recover possession from a tenant.	Twelve years.	When the tenancy is determined.
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This Article applies only when defendant is tenant.

(No. 140, Act IX.) This Article applies only when the person from whom possession is sought to be recovered is a tenant of the plaintiff.

Landlord may sue trespassers during continuance of tenancy.

(a) It is open to a landlord, where his title is in jeopardy from the aggressions of a neighbouring Zemindar, and where his title may be damaged by a denial of his rights over his land, to bring a suit for the purpose of having his rights declared as against such wrong-doer and for the purpose of being put into possession of the land as against them. *Bissesuri Dabeea v. Baroda Kanta Roy Chowdry*.⁽³⁾ In *Sheo Sohye Roy v. Luchmeshur Singh*,⁽⁴⁾ plaintiff sued in 1880, to recover possession of certain lands from which his predecessor in title had been dispossessed, in which suit the court of first instance found that the defendant had dispossessed the plaintiff's father in 1860, during the unexpired term of a lease granted by the plaintiff's father to a ticcadar. It was held, that the preponderance of authority in India was in favour of the

(1) I. L. R., 6 Ind. App. 110. | (3) I. L. R., 10 Calc., 1076.
(2) I. L. R., 6 All., 260. | (4) I. L. R., 10 Calc., 577.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

view that limitation ran from the date of the expiry of the ticca and not from the time when the defendant had been held by the court of first instance to have dispossessed the plaintiff's father. Mitter, J., observes: "It was also not disputed that if the twelve years be counted from the date when the term of the ticca came to an end, the plaintiff would not be barred by limitation. On the other hand, if the period prescribed by the law of limitation is to be computed from the date of dispossession as found by the First Court, the claim of the plaintiff would be barred by limitation. Upon this point, *viz.*, whether the one or the other period of time is the proper point from which limitation is to run, there is a conflict of authority."

Observations of Mitter, J., on the point whether limitation runs from date of dispossession or from the expiry of the term of lease.

(b) In *Chandmal v. Bachraj*,⁽¹⁾ plaintiff on the 30th October, 1879, sued to eject the defendant, a tenant, who, the Lower Court found had been such, down to 14th April, 1866, and after that date had been in adverse possession as he had been served with notice to quit. The notice given was by means of an advertisement in a newspaper, and it was not proved that the same form of notice was sent to the defendant by hand or post. It was held that such publication, even under circumstances which made it highly probable that it came to the knowledge of the tenant, is not, without more, such proof of service as will suffice to terminate the tenancy or entitle the tenant to contend that he remained after the date fixed by the notice for vacation, in adverse possession of the premises.

Publication in a newspaper of notice to quit is not in itself sufficient to determine tenancy.

(c) In *Maidin Saiba v. Nagapa*,⁽²⁾ plaintiff sued to recover certain lands which the defendant pleaded was included in a permanent lease in 1849, by the plaintiff's predecessor in title. It was found that the land was not included in the permanent lease and that the defendant had been in actual possession from 1849, claiming throughout

B. H.
A defendant may plead tenancy and rely on the Statute of Limitations.

(1) 7 Bom., I. L. R., 474.

| (2) I. L. R., 7 Bom., 96.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

to hold it as permanent tenant while the plaintiff was denying such right. The plaintiff contended that as the defendant had claimed the land as a tenant, his possession was not adverse under Article 144. Following the Full Bench Ruling in *Dinomoney Dabea v. Doorga Persad Mouzoomdar*,⁽¹⁾ which upheld the right of a defendant to set up the defence of tenancy, and at the same time to rely on the Statute of Limitations, it was held that under the circumstances of this case, the defendant's possession was adverse, that the defendant was a trespasser and that the case therefore was not as one between landlord and tenant. This case was distinguished from the case reported at the foot of 12 B. L. R., 282, on the ground that such possession in that case was held not adverse, because notice of the defendant's claim under a *mokerrari* tenure, had not been given to the plaintiff.

B. H.
Tenant not paying rent for more than twelve years does not constitute adverse possession.
(Jan. 1879.)

Tenant pleading that the relation has ceased is bound to prove it by affirmative proof.
(June 1878.)

Madras case.
(March 1881.)

(d) If possession can be referred to contract of tenancy under which the tenant entered, mere length of enjoyment without payment of rent does not under ordinary circumstances affect the relation of the parties. Non-payment of rent by a tenant for more than twelve years does not constitute adverse possession. *Dadoba v. Krishna*.⁽²⁾ In *Rungolall Mundul v. Abdool Guffoor*,⁽³⁾ it was held, that where the relationship of landlord and tenant is once proved to exist, the mere non-payment of rent, though for many years is not sufficient to show that the relationship has ceased and that a tenant contending in a rent suit that such relationship has ceased, is bound to prove that fact by some affirmative proof, and more especially is he so bound when he does not expressly deny that he still continues to hold the land in question in the suit. Following the above decision, the High Court of Madras

(1) 12 B. L. R., 274. | (2) I. L. R., 7 Bom., 34.
(3) I. L. R., 4 Calc., 314.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

in *Tiruchurna Perumal Nadan v. Sanguvien*,⁽¹⁾ held that non-payment of rent for upwards of twelve years and a grant of Patta by Government to defendant for five years do not, when Government claims no interest adverse to plaintiff, and plaintiff does not consent to defendant becoming tenant to Government, create any adverse possession in the defendant, adverse to plaintiff. In *Poresh Narain Roy v. Kassi Chunder Talukdar*,⁽²⁾ the Calcutta High Court held that non-payment of rent for twelve years and more does not relieve an occupancy ryot from the status of a tenant so as to give him a title to the land. Rent falls due at certain period, and the failure to pay it becomes a recurring cause of action, and therefore where the right to take rent is admitted by the ryot, no question of limitation can arise. In *Prem Sukh Das v. Phupia*,⁽³⁾ it was held that if once the relation of landlord and tenant were established, non-payment of rent by the defendants for twelve years prior to the institution of the suit would not suffice to establish that the tenancy had determined, and that the defendant had obtained the title by adverse possession, so as to defeat the claim for rent.

C. H.
(Dec. 1878.)

A. H.
(Dec. 1879.)

(e) When a permanent tenure has been granted by a ghatwal, if the successor of such ghatwal, being one of the ghatwals to whom Regulation XXIX of 1814 applies, wishes to resume that tenure, he must bring his suit within twelve years after succeeding to the ghatwali estate. The possession of the tenant is adverse to him from the time of the decease of his immediate predecessor. This Article does not apply to cases in which the plaintiff seeks to recover a tenure permanent in its nature and not determinable by notice. *Modho Kooery v. Tekeit Ram Chunder Singh*.⁽⁴⁾

This Article does not apply to a permanent tenure and not determinable by notice.

Possession of the tenant of a ghatwal for twelve years is adverse from the time of the decease of his immediate predecessor.

(1) I. L. R., 3 Mad., 118.

(2) I. L. R., 4 Calc., 661.

(3) I. L. R., 2 All., 517.

(4) I. L. R., 9 Calc., 411.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

If a tenant for years holds over in India, time does not begin to run until the tenancy on sufferance is determined.

Possession of a tenant by sufferance is not adverse.

Landlord might by assent convert tenancy at sufferance into a tenancy at will, or by dissent make the continuance in possession tortious.

(f) In *Adimulam v. Pir Ravuthan*,⁽¹⁾ the plaintiff, in April, 1881, purchased a house from defendant No. 1 for Rs. 800; the house was in the occupation of defendant No. 2, who denied the title of defendant No. 1. The plaintiff brought this suit to obtain possession of the house and mesne profits, or for the recovery of his purchase-money. It is asserted that in a suit brought by one Gurusami against defendant No. 2, the latter entered into a compromise, whereby it was agreed that he should hold the house as Gurusami's tenant and surrender it to him on the expiry of seven years which expired in 1863. Defendant No. 1 alleged that Gurusami was a mere name-lender for him and assigned the house to him in 1863. The Lower Appellate Court dismissed the claim for possession as barred, but decreed the purchase-money to the plaintiff. It was held, that if a tenant for years holds over in British India, time does not begin to run against the landlord until the tenancy on sufferance has been determined. The court observe: "Where a person who has been let into or allowed to remain in possession as a tenant for a term of years, holds over, he becomes a tenant by sufferance. The possession of a tenant by sufferance is not adverse to the landlord, and under the English Law until the passing of the Limitation Act, 3 and 4, Wm. IV, clause 27, limitation would not have begun to run against the landlord until the tenancy had determined. It might be determined by the act of the landlord, who by assent might convert it into a tenancy at will, or by dissent make the continuance in possession tortious. Or it might be determined without the landlord's intervention by the transference of possession to a third-party; for, having no title, the tenant on sufferance could convey none. For the same reason, if a tenant by

(1) I. L. R., 8 Mad., 424.

Description of suit.	Period of limitation.	Time from which period begins to run.
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sufferance dies, and his representative enters and holds on, he holds as a trespasser. The Statute 3 and 4, Wm. IV, c. 27, effected, however, change in the law of limitation, and debarred the landlord, who was entitled to the reversion on the expiry of the term, from maintaining suit unless he instituted proceedings within 20 years from the date when the right to enter accrued to him. The English rule of law as to the nature of the possession of a tenant who holds over after the expiry of a term has been adopted in this country; but the Indian Law of Limitation differs essentially from that of the present English Law with respect to such tenancies. By Article 139, Act XV of 1877, the landlord has a right to sue to recover possession from a tenant any time within twelve years from the determination of the tenancy. It is for the person who resists the right to show that the tenancy has determined. That the Legislature intended this result is indicated by the following Article, which provides that the twelve years allowed for a suit to a remainder-man or reversioner (other than a landlord) shall run from the date when his estate falls into possession."

Difference between the Indian and English Limitation Law with respect to such tenancies.

140.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.	Twelve years.	When his estate falls into possession.
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(a) (No. 141, Act IX.) Remainder is that expectant portion, remnant, or residue of interest which, on the creation of a particular estate is at the same time limited over to another, who is to enjoy it after the determination of such particular estate. A remainder does not, like a reversion, arise by operation of law, but is always created by act of parties. It may be granted over, charged, devised, or barred by a prior tenant-in-tail.

Remainder.

A remainder does not like reversion arise by operation of law, but is always created by act of parties.

Description of suit.	Period of limitation.	Time from which period begins to run.
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Remainder-man.

Remainder-man is a person entitled to an expectant estate.—*Wharton*.

Reversion.

(b) Reversion. When a person has an interest in lands, and grants a portion of that interest, or in other terms, a less estate than he has in himself, the possession of those lands shall, on the determination of the granted interest or estate, return or revert to the grantor. This interest is what is called the grantor's reversion, or, more properly, his right of reverter, which, however, is deemed an actual estate in the land, bearing the fruits of seignory. Thus, a grant of an estate by the owner of the fee-simple 'to A for life,' leaves in the grantor the reversion in fee-simple, which will commence in possession after the determination of A's life-estate; and this is called the particular estate; particular as carved or sliced out of the larger estate or reversion. Reversioner is one who has a reversion.—*Wharton*.

Reversioner.

The question was whether, if a person dies leaving a female as heir-at-law, the reversionary heirs have a fresh cause of action as to the estate at the time of her death, or whether they are barred by limitation if she would have been barred.

(c) In *Nobin Chunder Chuckerbutty v. Issur Chunder Chucker butty*,⁽¹⁾ "Ramdoollub Chuckerbutty died leaving two sons, two daughters, and a widow. The two sons died without issue in the lifetime of the widow, and upon their death their respective estates descended to the widow as heir. The two daughters each had son or sons, who, upon the death of the widow, succeeded to the estate of their uncle. After the death of the sons, a stranger entered, and the widow never took possession. The widow died in 1266. The question is, whether the sons of the daughters had a fresh cause of action upon the death of the widow. The question of law which is raised for our opinion is, whether, if a person dies leaving a female as his heir at law, the reversionary heirs have a fresh cause of action in regard to the estate of the ancestor at the time of the death of the female heir, or

(1) 9 W. R., 505.

Description of suit.	Period of limitation.	Time from which period begins to run.
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whether they are barred by limitation if the female heir would have been barred.

(d) Peacock, C. J., observes: "Sir Lawrence Peel in *Goluck Monee Dabee v. Degumber Dey*, says it has been invariably considered for many years that the widow, (speaking of the widow succeeding as heir) 'fully represents the estate, and it is also the settled law that adverse possession which bars her, bars the heir also after her, which would not be the case if she were a mere tenant for life, as known to the English Law.

Widow succeeding as heir fully represents the estate, and adverse possession barring her also bars the heir which would not be the case if she was a tenant for life as known to English Law. (Nov. 1852.)

(e) It was also held by the Privy Council in the *Shivagunga* case,⁽¹⁾ 9th Moore's Indian Appeals, that in the absence of fraud or collusion a decision against a widow, with regard to her deceased husband's estate, would be binding upon the reversionary heirs.

P. C. held that in the absence of fraud or collusion a decision against widow would bind the reversionary heirs. (March 1868.)

(f) In the 8th Moore's Indian Appeals, page 550, it was said, that comparing a Hindu widow to a tenant for life was calculated to mislead. In the *Shivagunga* case, the widow was compared to a tenant-in-tail; but the heirs in that case were not likened to remainder-men, and must, therefore, have been in the position of tenants-in-tail. Such heirs would be bound, if the tenant-in-tail was barred, though the remainder-man might not be. If, then, in the *Shivagunga* case, the widow was like a tenant-in-tail, and the reversionary heirs were like the issue-in-tail, and the same likeness exists in the present case, the reversionary heirs would be barred by limitation which ran against the female heir. If the female heir in the present case had sued the wrong-doer, and, without fraud or collusion, had failed to make out her case to turn him out of possession, the reversionary heirs would have been bound by the decision. I am assuming that they are not claiming through the female heir. For instance, if the

Comparing a widow to a tenant for life was calculated to mislead. Widow was compared to a tenant-in-tail and heirs were not likened to remainder-men but to the issue-in-tail.

In a suit by the female heir against the wrong-doer if he succeeded in his defence of purchase from the ancestor, the reversionary heirs would be bound by the decision in the absence of fraud or collusion.

(1) 2 W. R. P. C. 31.

Description of suit.	Period of limitation.	Time from which period begins to run.
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female heir had sued the wrong-doer, and he had set up a purchase from the ancestor, and had succeeded in that defence at the suit of the female heir, the reversionary heirs would be barred by the decision in the absence of fraud or collusion.

It would be anomalous to hold that the reversionary heirs, who would have been barred by a decision against the widow if she had brought her suit in time, would not be barred by limitation against her.

B. H. Garth, C. J., observes that a reversioner under the Acts of 1871 and 1877, has twelve years to sue for possession from the time the estate falls into possession i. e., from the date of widow's death, though under Act XIV of 1859, he had twelve years from the date of dispossession, and twelve years adverse possession which barred the widow barred him also. (August 1888.)

The provision in the Acts of 1871 and 1877 regarding remainder-men and reversioners assimilates the law in this

(g) The law of limitation is passed for the benefit of defendants, partly upon the ground that after length of time they may have lost the evidence in support of their right; and it would be anomalous to hold that a female heir was barred by limitation, lest the defendant should have lost his evidence to prove his right against her, and to hold that the reversionary heirs, who would have been barred by a decision against the widow if she had brought her suit in time, are not barred by limitation against her."

(h) In *Srinath Kur v. Prosunno Kumar Ghose*,⁽¹⁾ Garth, C. J., observes: "A reversioner who succeeds to immoveable property has now twelve years to bring his suit from the time when his estate falls into possession. (See Article 141 of the Act of 1871, and Article 140 of the Act of 1877). Under the Act of 1859, the language was very different. The suit under that Act must have been brought within twelve years from the time when the cause of action arose; and as it was considered by the Full Bench of this court, that the cause of action arose at the time when the owner of the inheritance was first dispossessed, they held that a twelve years' dispossession which barred the owner of the inheritance for the time being, (although a female), barred also the reversioner. See *Nobin Chunder Chuckerbutter v. Gurn Persad Doss*.⁽²⁾ The provision in the present Act, as well as that in the Act of 1871, as regards remainder-men and reversioners, assimilates the law in this country to the law of

(1) I. L. R., 9 Cal., 934.

(2) B. L. R., Sup., Vol., 1008: S. C., 9 W. R., 505.

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England. (See 3 and 4, Wm. IV, chapter 27, section 4.)" In *Azam Bhuyan v. Faizuddin Ahamed*,⁽¹⁾ Wilson, J., observes: "Article 141 of schedule 2 of Act XV of 1877, refers to suits by persons claiming on the death of a Hindu or Mahomedan female, under an *independent title*, in the same way as in respect of suits by remainder-men, reversioners, and others, Article 140 does. It does not apply to the case of a person suing on the very same cause of action which accrued to a female, and suing by right of being her heir."

country to the law of England. (Feb. 1886.)

(i) In *Parekh Ranchor v. Bai Vakhat*,⁽²⁾ Birdwood, J., observes: 'A decree obtained against the widow, will enable a creditor to attach and sell, not only the widow's life estate in the immoveable property, but also the reversionary estate of the remainder-man;' and in the case referred to at p. 96 of West and Buhler's Digest of Hindu Law, 3rd Ed., it was held that the widow would completely represent the estate, and under certain circumstances the Statute of Limitations might run against the heirs to the estate, whoever they might be.

A widow could completely represent the estate under certain circumstances. Limitation might run against the heirs of the estate whoever they might be.

"But though a sale under a decree against the defendant Bai Vakhat, for Odhav's debt might, under certain circumstances, have bound the plaintiff, the Statute would clearly not run against him if he is in a position to seek relief on the ground of fraud. The case would then be governed by other considerations than those ordinarily applicable. As pointed out by Markby, J., in *Brammoye Dasee v. Kristo Mohun Mookerjee*,⁽³⁾ 'the rule, that a decree against a widow binds the reversioner, is subject to this qualification, that there has been a fair trial of the right at the former suit. That is laid down in what is commonly called the Shivagunga case,'⁽⁴⁾

But Statute would not run against the heirs if he sought for relief on the ground of fraud.

That a decree against a widow binds the reversioner is subject to the qualification that there has been a fair trial of the

(1) I. L. R., 12 Calc., 594.

(2) I. L. R., 11 Bom., 119.

(3) I. L. R., 2 Calc., 222.

(4) 9 Moore's L. A., 543.

Description of suit.	Period of limitation.	Time from which period begins to run.
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right at the former suit.

and in *Mohima Chunder Roy Chowdhry v. Ram Kishore Acharjee Chowdhry*.⁽¹⁾ It was there pointed out that the Privy Council, in a more recent case (*N. C. Ghose v. Sreemutty*),⁽²⁾ have said that, while they adhere to the rule that the widow represents the estate of the reversioner for some purposes, it is her duty not only to represent the estate, but to protect it also.' Where the ground of action really is that the widow did not in the former suit protect the interests of the person who was to take after her death, but collusively suffered judgment against herself and sale of her husband's property in execution, then if such person on such grounds treats the sale as inoperative, and seeks for a declaration that it is not binding on him, Article 12, clause (a) of schedule 2 of the Limitation Act would not apply to the suit."

If a conveyance by an hereditary officer gave to alienee a greater estate than one for life, court would cut it down to an estate for life.

(j) In respect of *vatans* appendent to hereditary offices, the Bombay High Court observe: "No doubt, if a conveyance by an hereditary officer purported to give to the alienee a greater estate than one for the life of the alienor, the court would, under the Regulation, have cut it down to an estate for his life. The heir's title to the land would not accrue until the death of A (the alienor), and the possession of the alienee would not be regarded as adverse to the heir, inasmuch as it would be a possession in no wise inconsistent with his title so long as the incumbent A lived. But, from the moment of A's death, the possession would be adverse to B, and, if B suffered twelve years from that event to elapse without bringing his suit to recover the land, we think not only B himself, but also B's heir, would be barred by the Limitation Law applicable to this case, Act XIV of 1859. To hold otherwise would be to put an end to the Law of Limitation

If successor allows twelve years to elapse from alienor's death, not only he, but also his heirs would be barred under Act XIV of 1859.

(1) 15 Bengal, L. R., 142. | (2) 11 Moore's I. A., 241.

Description of suit.	Period of limitation.	Time from which period begins to run.
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altogether as to *vatans* appendent to hereditary offices, a course which we do not see any valid ground for adopting. *Babaji v. Nana*,⁽¹⁾ (See *Notes* under Article 141).

(k) In *Radhabai and Ramchandra Konher v. Anantrav Bhagvant Deshpande*,⁽²⁾ it was held that, in the absence of fraud and collusion, adverse possession for twelve years during the lifetime of one holder of service *vatan* lands is a bar to succeeding holders, and that in the absence of fraud and collusion, judgment against one holder of service *vatan* lands is *res judicata* as regards a succeeding holder. West, J., observes: "The recent Limitation Acts, though less distinctly expressed for the conversion of possession into ownership, are, for the purposes of the present discussion, laws of acquisitive prescription; the right acquired under them is gained in a shorter time, but is of the same kind as under the earlier law; *M. S. Sinde v. G. P. Sinde* (4 B. H. C. R., 51. A. C. J); *Gundo Anandrav v. Krishnarav Govind* (*Ibid* 55, A. C. J); *Giriapa v. Jakana* (12 B. H. C. R., 172). If the successor, by virtue of the grant to a *vatandar*, who has aliened part of the *vatan*, is not merely an heir, then he must be a remainder-man, and this, according to the Hindu Law, he could not be after the decease of contemporaries of the original grantee—*Kumar Tarakeshwar Roy v. Kumar Joshi Shikhareswar* (L. R., 10, I. A. 60). Under Article 140, schedule 2 of Act XV of 1877, he is barred by twelve years' possession after his heirship has become a present estate (see *per* Lord Mansfield, C. J., in *Fischer and Taylor v. Prosser Cowper*, at p. 218), and by section 28 of the Act his right has at the same moment become extinguished. The decisions say that it has become extinguished in favour of the adverse holder for the

Adverse possession for twelve years during the lifetime of one holder of service *vatan* lands is a bar to succeeding holders in the absence of fraud of collusion, judgment against one holder of service *vatan* lands is *res judicata* as regards a succeeding holder. (Jan. 1885.)

The successor by virtue of grant to a *vatandar* is not merely an heir, then he must be a remainder-man and this according to Hindu Law he could not be after the decease of contemporaries of the original grantee. He is barred by twelve years possession after his heirship has become a present estate.

(1) I. L. R., 1 Bom., 537. | (2) I. L. R., 9 Bom., 198.

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prescribed time, whose ownership, except as against some wholly independent title, must thus, at the same moment, have become complete. (*Radha Govind v. Inglis*, Calc., L. R., 364). That this was the intention of the Acts, appears from their preambles, though it must be admitted that the enacting parts are by no means perfectly adapted to the purpose."

141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Twelve years.	When the female dies.
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C. H. F. B. held under Act XIV of 1859, that adverse possession barring widow, bars the reversioner. (27th Ap. 1868.)

It was held that the above rule could not apply to alienations made by widow, in which case cause of action could accrue on her death.

P. C. adopted the above ruling. (Jan. 1875.)

(a) In *Nobin Chunder Chuckerbutty v. Guru Persad Doss*,⁽¹⁾ it was held under Act XIV of 1859, that cause of action arose at the time that the owner of the inheritance was first dispossessed, and that a twelve years' disposssession which barred the owner for the time being, although a female, barred also the reversioner. To this general proposition, the Full Bench laid down the exception, "that the same rule of law would not apply to alienations made by a Hindu widow while in possession of the estate, in which case cause of action to recover possession would accrue on the death of the widow". Following the above case the Privy Council in *Amirto Lal v. Rajoneekant Mitter*,⁽²⁾ held in January, 1875, that where a Hindu widow, who takes by inheritance from her husband is dispossessed, the period of limitation as against the reversionary heir claiming the succession after the widow's death is, in the absence of fraud, to be reckoned not from the time of the widow's death, but from the time from which it would have run against the widow had she lived

(1) B. L. R., Sup., Vol., 1008. | (2) 15 B. L. R., P. C., 10.

Description of suit.	Period of limitation.	Time from which period begins to run.
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and sued to recover the inheritance. In *Pursut Koer v. Palut Roy*,⁽¹⁾ plaintiff's mother became a widow in 1842, and constant squabbles between her and husband's brother resulted in an *ikararnama* in 1846, by which the widow made over to her brother-in-law certain properties belonging to the estate of her husband. The widow died in 1878. In March, 1879, her daughters sued for possession of their father's properties which had then passed into the hands of certain vendees. It was held that the suit was not barred under Article 141 of Act XV of 1877, there having been no possession adverse to the widow by dispossession for more than twelve years, the widow's cause of action having ceased when she entered into *ikarar* in 1846 and gave up her right to the property. When the same question arose before a Full Bench in *Srinath Kur v. Prosunno Kumar Ghose*,⁽²⁾ in which grandsons by a daughter who died in 1877, sued for possession of their shares of property of their grandfather from a grandson, by another daughter who died in 1863, the defence was that by adverse possession from 1863, the defendant and his father had acquired a good title. The First Court decided that the plaintiff's mother alienated her share, and so effected a partition, and that therefore she did not hold any title after her sister's death. It was found that the plaintiff's mother was out of possession from 1863. It was held that under Article 141 of Act XV of 1877, a reversioner has twelve years to bring a suit for possession from the time when his estate falls into the possession, i.e., from the date of the death of the widow. Garth, C. J., observes that the provisions of the Limitation Acts of 1871 and 1877, regarding reversioners and remainder-men assimilate the law in this country to the Law of England. (3 and 4, Willm. IV, ch. 27, s. 4.)

C. H.
Reversioner's suit for property transferred by widow to her husband's brother by an *ikarar* entered into in compromise of quarrels, held not barred as possession was not adverse.
(Dec. 1881.)

C. H.
Suit by grandson by a daughter for share of property from defendant another grandson by another daughter, held not barred tho' defendant and his father held it from 1863.
(August 1883.)

Provisions of the Limitation Acts regarding reversioners, assimilate the law of this country to the Law of England.

(1) I. L. R., 8 Calc., p. 442. | (2) I. L. R., 9 Calc., p. 934.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VIII.
Twelve years.

Adverse possession accrues even during the lifetime of a widow. (June 1882.)

In case of 'possession' by invalid alienation right to sue accrues on widow's death.

C. H.
Right of a Hindu to possession of real property on widow's death must be one *in esse* at the time of death. The determination of such right during widow's life extinguishes reversioner's right on her death. (Feb. 1880.)

M. H.
(Aug. 1881.)

P. C.
Widow's alienation against Solenama which provides against alienation is not breach or forfeiture under Article 143. (July 1881.)

(b) In *Gya Persad v. Heet Narain*, which was a suit to recover possession of certain houses with meane profits,⁽¹⁾ it was held, that a title by adverse possession for more than twelve years accrues even during the lifetime of a Hindu widow, but if possession arises directly from any invalid alienation on her part, special provision is made for the right to sue on the parts of the reversioners within twelve years from her death, and the accrual of their title.

(c) The right of a Hindu to the possession of immoveable property on the death of a Hindu widow, to which Article 142, schedule 2, Act IX of 1871 refers, must be one *in esse* at the time of the death of the widow. The determination, therefore, of such right during her lifetime extinguishes also the right of the reversioner on her death. *Saroda Soondwry Dossee v. Doyamoyee Dossee*.⁽²⁾ In *K. Subramaniam Chetti v. T. Subramaniam Chetti*,⁽³⁾ Kindersley, J., observes: I am inclined to think that the suit is barred, because, since the death of the testator in 1858, the widows have not been in possession of their full rights under Hindu Law, but only of such allowances as they received under the will. The case of *Saroda Soondury Dossee v. Doyamoyee Dossee* is an authority for saying that, if the widow in her lifetime was debarred from bringing the suit, the reversioner on her death would also be debarred.

(d) In *Bibi Sahodra v. Rai Jang Bahadur*,⁽⁴⁾ a Hindu widow, by a Solenama with her deceased husband's cousin which gave her no power to alienate held for life her husband's share. She sold it as if she had absolute interest, and the vendee's name was entered in the Revenue records; but no change of possession took place till her death. It was held by P. C., that the suit by the cousin

(1) I. L. R., 9 Calc., 93.

(2) I. L. R., 5 Calc., 938.

(3) I. L. R., 4 Mad., 129.

(4) I. L. R., 8 Calc., 224.

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after her death was not barred by Article 144 of Act IX of 1871, which corresponds to Article 143 of Act XV of 1877. It is observed that there was no condition against alienation of the widow's life interest, and if there had been, there was neither any rule of law nor anything in the words used in the Solenama attaching forfeiture to the breach of such a condition.

(e) A widow "so completely represents the inheritance, that in a suit (in which she is a defendant) to foreclose a mortgage made by him, (her husband) his next male heir is not a necessary party, although he has sometimes been made so *ex majori cautela*. In *Doe d'Goluckmoney Dabee v. Diggumber Dey*, Peel, C. J., observed: 'It has been invariably considered for many years that the widow fully represents the estate; and it is also the settled law that adverse possession, which bars her, bars the heir also after her, which would not be the case if she were a mere tenant for life as known to the English Law; on the contrary, if such were her estate, her heir would have 20 years after her death for making his entry, which would be a most mischievous rule to establish.' The completeness of her title to the inheritance is further illustrated by the same learned Judge's observations and those of Colville, J., in *Mohar Ranees Essadah Bai v. the East Indian Company* and the other cases mentioned in *Lalchand Ramdial v. Gumtibai*, and there quoted at pp. 155 to 157 of the Report in 8 Bombay, H. C. Rep., O. C. J. In *Ramchandra Tantra Das v. Dharmo Narayan Chuckerbutty*, it was held by a Full Bench in Calcutta, that the interest of an heir, expectant on the death of a widow in possession, is so mere a contingency, that it cannot be regarded as property, and, therefore, was not liable to attachment and sale under section 205 of Act VIII of 1859." *Bhala Nahana v. Parbhu Hari*.⁽¹⁾

B. H. held, a widow so completely represents the inheritance that the next male heir is not a necessary party to a suit to foreclose a mortgage.

Observations of Peel, C. J.

C. H. held the interest of an heir expectant on widow's death, is not property liable to attachment and sale under sec. 205 of Act VIII 1859.

(1.) I. L. R., 2 Bom., 74.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

If right to present enjoyment vesting in the senior of the family is barred, right of survivorship attaching to and dependent on, it is also barred. (July 1863.)

It may be that the rights of survivorship vesting in the other co-parceners cannot arise as between themselves until each branch entitled to preferential enjoyment becomes either extinct or relinquishes it.

(f) In *Vijayasami v. Periasami*,⁽¹⁾ plaintiff, as grandson of the Zemindar of Sivaganga, sued to recover the zemindari. Upon the death of Gouri Vallaba Tevar in 1829, the impartible zemindari of Sivaganga, which had been acquired by him, was taken possession of by the representative of his elder brother, Oya Tevar, from whom it was recovered by Kattama Nachiyar, the daughter of Gouri Vallaba Tevar in 1863, by suit. From that date until her death in 1877, the estate remained in the possession of Kattama Nachyar. It was subsequently recovered by suit from her sons by the defendant (the son of her elder sister), as being the eldest surviving grandson of Gouri Vallaba Tevar. The plaintiff alleging that he was the third son of Namasivaya, who was the second son of Gouri Vallaba Tevar, by his wife Manikkathal, and that he and not the defendant was the eldest surviving grandson of Gouri Vallaba Tevar, sued in 1881, to recover the estate from the defendant. Admitting that he was born in the lifetime of Gouri Vallaba Tevar, the plaintiff pleaded that it was not open to him to sue for the estate until the year 1870, when his father, his elder brothers, and a son of his father's elder brother had all died. It was held, that from 1829, limitation began and continued to run against the descendants of Manikkathal. The court observe: "This right of the joint-family became barred by its non-exercise for upwards of 50 years. It may be that, when an impartible estate vests in a joint-family consisting of several co-parceners and is capable of enjoyment but by a single member at a time, the rights of survivorship vesting in the other co-parceners cannot arise as between themselves, until each branch entitled to preferential enjoyment, according to seniority of descent, becomes either extinct or relinquishes its

(1) I. L. R., 7 Mad., 242.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

rights. But as between the joint-family and claimants under a title adverse to it, the co-parcener in enjoyment and the Zemindar for the time being represents for purposes of limitation the entire joint-family consisting of his lineal and collateral heirs. The right of survivorship is a limiting incident attaching to, and dependent on, the right of present enjoyment vesting in the senior representative of the family, and when the last-mentioned right is barred, the former, which is only its offshoot, is also barred. If the contention be valid that limitation would commence to run against each collateral heir or co-parcener only when his right of survivorship accrues, the statute would practically have no application as between the joint-family entitled to an impartible estate and adverse claimants. This representation of the appellant in the person of the senior member is even more complete than the representation of a reversioner by a childless widow. But the case of *Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty*,⁽¹⁾ was approved by the Privy Council in *Aumirtolall Bose v. Rajooneekant Mitter*.⁽²⁾ The appellant must, therefore, be considered for purposes of limitation as between himself and claimants in possession under a title adverse to that of the family, to be entitled to take the zemindari under the person entitled to present enjoyment as the representative of the joint-family of which he is a member."

(g) In *Azam Bhuyan v. Faizuddin Ahamed*,⁽³⁾ *N*, a Mahomedan, died in 1849, leaving immoveable property which was inherited by his mother *B*, his brother *E* and his sister *A*. It was found that *A* was never in possession of the share inherited by her and that she died in 1878.

As between joint-family and claimants under adverse title to it, co-parcener in enjoyment and Zemindar for the time being represents, for purposes of limitation, the entire joint-family consisting of his lineal and collateral heirs.

If limitation can be held to run against each collateral heir or co-parcener only when his right of survivorship accrues, the Statute would have no application as between joint-family entitled to an impartible estate and adverse claimants.

Suit as heir of a deceased female on the very same cause of action which accrued to her does not fall under this Article. (Feb. 1884.)

(1) 9 W. R., 505. | (2) L. R., 2 Ind. App., 121.

(3) I. L. R., 12 Calc., 594.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

It was held in a suit against *B* and his son brought in 1884, by *A*'s heirs for possession of that share, that Article 141 of the Limitation Act did not apply, and that the suit as to that share was barred. *Per* Wilson, J., Article 141 of schedule 2 of Act XV of 1877, refers to suits by persons claiming on the death of a Hindu or Mahomedan female under an *independent title*, in the same way as in respect of suits by remainder-men, reversioners, and others, Article 140 does. It does not apply to the case of a person suing on the very same cause of action which accrued to a female, and suing by right of being her heir.

Case where a reversioner was held not entitled to avail himself of the plea of limitation which the deceased widow had waived. (June 1877.)

(h) In *Bhala Nahana v. Parbhu Hari*,⁽¹⁾ a member of the Talabda Koli caste of Hindus, by an express promise to settle his property upon the boy, induced the parents of the defendant to give him their son in adoption, but died without having executed such settlement. In such a case, the equity to compel the heir and legal representative of the adoptive father specifically to perform his contract survived and the property in the hands of his widow was bound by that contract. Therefore, when the widow of the adoptive father, nearly 30 years after his death, gave effect to his undertaking by executing a deed of gift of his property in her hands in favor of the adopted son, it was held that such an alienation was valid as against the next heir by blood of the adoptive father, and he could not, on the death of the widow, avail himself of the plea of limitation which she had waived.

142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years.	The date of the disposssession or discontinuance.
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(1) I. L. R., 2 Bom., 67.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

(a) (No. 143, Act IX.) Garth, C. J., observes: "I think the words "dispossession" and "discontinuance" (which are borrowed from the English Limitation Act of William IV) apply only to cases where the owner of land has, either by his own act, or that of another, been deprived altogether of his dominion over the land itself, or the receipt of its profits."

"Dispossession" and "discontinuance" apply only to cases where owner of land has been deprived of his dominion over land or receipt of its profits.

(b) "But where the owner, in the exercise of his own proprietary right, permits some other person to occupy his land, or to receive his rents, then, whether the relation of landlord and tenant exists between the parties or not, I consider that the possession of the owner is not discontinued, because, under such circumstances, the possession of the occupier is the possession of the owner." Gobind Lal Seal v. Debendro Nath Mullick.⁽¹⁾

Owner permitting another to occupy land is not a discontinuance of possession.

(c) In a suit brought by plaintiff to recover possession of certain lands from which his father had been dispossessed during the unexpired term of a lease granted by him to a Ticcadar, it was held that the preponderance of authority in India was in favor of the view that limitation ran from the date of the expiry of the ticca, and not from the time when the defendant had been held by the court to have dispossessed the plaintiff's father. Sheo Solye Roy v. Luchmeshur Singh.⁽²⁾

Limitation runs from the expiry of the lease to proprietor's suit to recover land dispossessed before it.

(d) In Juggobundhu Mukerjee v. Ram Chunder By-sack,⁽³⁾ the decree-holder who obtained symbolical possession of lands in the occupation of the tenants awarded to him by a decree having lost possession sued for it. The court held that as against third-parties such symbolical possession is of no avail, because they are not parties to the proceedings. But if the defendant subsequently dispossesses the plaintiff by receiving the rents and profits,

Defendant improperly receiving rents due to plaintiff amounts to dispossession.

(1) I. L. R., 6 Calc., 311. | (2) I. L. R., 10 Calc., 577.

(3) I. L. R., 5 Calc., 584.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

the plaintiff will have twelve years from such dispossession to bring another suit.

The meaning of the Article is that where there has been possession followed by discontinuance of possession, time runs from discontinuance whether there has or has not been adverse possession.

(e) In a suit to recover possession of a house, the plaintiffs alleged that their predecessor in title had permitted A, the father of the defendants, to occupy the house in question without paying any rent for it, and that since A's death, which took place about 20 years before the institution of the suit, the defendants had been permitted to reside therein without paying rent. The defendants contended that the plaintiffs' predecessor in title had made gift of a house to A, that he had remained in possession of it until his death; and that, since then, they had been in possession of the house by virtue of the gift. It was held that the suit was barred by limitation under Act XV of 1877, schedule 2, Article 142. The meaning of Article 142 is, that, where there has been possession followed by a discontinuance of possession, time runs from the moment of its discontinuance, whether there has or has not been any adverse possession, and without regard to the intention with which, or the circumstances under which possession was discontinued. *Gobind Loll Seal v. Debendro Nath Mullick*.⁽¹⁾

Plaintiff seeking for possession on the ground of dispossession should show possession by him within twelve years before suit.

(f) In *Bhootnath Chutterjee v. Kedarnath Banerjee*,⁽²⁾ plaintiff sued for possession of land on the ground that the defendant by falsely alleging that he had obtained the land as gift from plaintiff's father got himself registered as the owner thereof under Bengal Act VIII of 1876. The defence was that the suit was barred and that plaintiff's father had made a verbal gift of the land which has been with defendant for 25 years. It was held that until the plaintiffs could show that their suit was not barred by limitation,—that is to say, that they were in possession within twelve years from the date of

(1) I. L. R., 5 Calc., 679. | (2) I. L. R., 9 Calc., 126.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VIII. Twelve years.		

the suit,—they could not call upon the defendant to prove his title under the alleged verbal gift. Prinsep, J., observes: "To make out his cause of action in a case of this kind, the plaintiff had to show the date on which he was dispossessed,—that is to say, to show that either on the particular date on which he stated the disposition to have taken place, or some other period within twelve years from the date of institution of the suit, he was in possession of his land. As an authority for this view of the law, we could refer to the judgment of the Privy Council in the case of *Rajah Sahib Perhlad Sein v. Maharajah Rajender Kishore Singh*,⁽¹⁾ *Dawkins v. Penrhyn*,⁽²⁾ and *Noyes v. Crawley*.⁽³⁾ Under the former Limitation Act, the cause of action, and under the present law the event from which limitation is declared to run, must have occurred within the prescribed period, and it lies on the plaintiff to show this.

(g) Accordingly, where the suit is for possession, and cause of action is dispossession, the plaintiff is bound to prove possession and dispossession within twelve years. Possession is not necessarily the same thing as actual user. When land has been shewn to have been in a condition unfitting it for actual enjoyment in the usual modes, at such a time and under such circumstances that that state naturally would, and probably did continue till within twelve years before suit, it may properly be presumed that it did so continue, and that the previous possession continued also until the contrary is proved. Such a presumption is in no sense a conclusive one. Its bearing upon each particular case must depend upon the circumstances of that case. Many acts which would be clearly adverse, and might amount to a dispossession as

Under the former Limitation Act cause of action, under the present Act the event from which limitation is made to run, must have occurred within the prescribed period.

When cause of action is dispossession, plaintiff is bound to prove possession and dispossession within twelve years.

For the case of lands unfit for actual enjoyment in the usual words.

(1) 12 Moore's L. A., 337. (2) 4 App. Cas., 51.

(3) 10 Ch. 31, 36.

Description of suit.	Period of limitation.	Time from which period begins to run.
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Mere allegation that defendants were tenants of the person under whom plaintiff claims will not shift the burden of proof.

When plaintiff proves that the person from whom defendant claims was tenant, it is for defendant pleading limitation to prove when nature of possession changed.

Occupancy ryots ejected otherwise than under section 22, of Act VIII of 1869, must sue for possession within one year from ejectment.

between a stranger and the true owner of land, would between joint-owners naturally bear a different construction. *Mahomed Ali Khan v. Khaja Abdul Gunny*.⁽¹⁾ When a person seeks to eject persons from premises claimed by him, on the ground that they are in wrongful possession of the premises, he is bound to show that he or some of the persons under whom he claims have been in possession of the property within twelve years before suit. A mere allegation in the plaint that the persons sought to be ejected were the tenants of the person through whom the plaintiff claims, will not shift the burden of proof. *Gopaul Chunder Chuckerbutty v. Nil-money Mitter*.⁽²⁾

(h) In a suit to recover possession, where defendant pleads limitation and plaintiff proves that the commencement of the possession of the party through whom defendant claims was as tenant, it is for the party who sets up the plea of limitation to show when the nature of that possession was changed, and how it became adverse. *Ramdhun Satra v. Nobin Chunder*.⁽³⁾

(i) The only remedy for a party in the position of an occupancy ryot, who alleges he has been ejected in contravention of the proviso to sections 22 of Bengal Act VIII of 1869, is a suit on the ground of the illegal ejectment, and such a suit must, under section 27, Bengal Act VIII of 1869, be brought within one year from the ejectment. *Golabolee v. Kootooboolah Sircar*.⁽⁴⁾ Section 27 of Bengal Act VIII of 1869, applies only to such suits for possession as the court is asked to decide irrespectively of any title, but simply on the ground that the plaintiffs have been ousted otherwise than by legal means; *Forbes v. Sree Lal Jha*.⁽⁵⁾ Where landlord does not himself directly take

(1) I. L. R., 9 Calc., 744.

(2) I. L. R., 10 Calc., 374.

(3) 12 W. R., 250.

(4) I. L. R., 4 Calc., 527.

(5) I. L. R., 8 Calc., 365.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

steps to interfere with the rights of cultivation of his tenants, but does so to other persons whose acts, he may, if it so pleases him, afterwards ignore, he is not in a position to set up a special plea of limitation under the Rent Law. *Kallida Pershad Dutt v. Ram Hari Chuckerbutty*.⁽¹⁾

Where a tenant's suit is both in form and substance one to recover possession on the ground of illegal dispossession by the landlord, the insertion in the plaint of a claim for declaration of the plaintiff's title is not sufficient to prevent the application of the limitation prescribed by section 27 of Bengal Act VIII of 1869. *Imam Buksh Mondul v. Momin Mondul*,⁽²⁾ Clause 6, section 23, Act X of 1859, referred only to possessory suits. It did not bar the jurisdiction of Civil Courts over suits in which plaintiff seeks to have his title declared and possession given him in pursuance of that title. *Gooroo Doss Roy v. Bishtoo Churn*.⁽³⁾

Act X of 1859 did not bar the jurisdiction of Civil Courts over suits in which plaintiff seeks for declaration of title and for possession in pursuance of that title.

143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years.	When the forfeiture is incurred or the condition is broken.
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(a) (No. 144, Act IX.) A Hindu widow, under an arrangement dated 1826, with her deceased husband's cousin, was in possession for life of a share of an ancestral property of her husband's family, in which he, jointly with the cousin, had held a share in his lifetime. This share she sold in 1845, as if she had held an absolute interest, and the purchaser's name was entered instead of hers in the revenue records; but no change of possession took place till her death, which occurred in 1862. To a suit brought in 1874 by the cousins' heirs to recover the property purchased from the widow more than twelve years after the sale, but less than twelve years after the widow's

Sale by a Hindu widow of her husband's property which she held under an arrangement with her husband's cousin was held not a breach of condition or forfeiture bringing the cousin's suit for possession within this Article.

(1) I. L. R., 5 Calc., 317. | (2) I. L. R., 9 Calc., 280.
(3) 7 W. R., 186.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

death, the defence was limitation under Act IX of 1871, schedule 2, Article 144, commencing from the date of the sale, there having been, it was alleged, "a breach of condition or forfeiture" within the meaning of that clause. By the terms of the arrangements contained in a solenama, the widow was to have no power to alienate, and after her death her share was to belong to the cousin. It was held, that these terms prohibited only such an alienation by the widow as would prevent the cousin's succeeding after her death, and the alienation made was good for the widow's lifetime. The Privy Council observe: "The terms of the compromise are, that the property shall remain in equal shares in the joint possession and enjoyment of the two parties; but the Mussamat Mainan shall have no power to alienate the moveable or immoveable properties, and after her death, those properties shall be the right of Kuldip Ram. There are no words of forfeiture and it would be a very strong thing and a very unusual thing to import a forfeiture where the parties have not provided for one, and where there is no rule of law attaching forfeiture to a particular Act. But in point of fact, the language of the deed of compromise points to quite a different result." It was held, accordingly, that Article 144 did not apply, and the suit was not barred by limitation. *Bibi Sahodra v. Rai Jang Bahadur*.⁽¹⁾

P. C. observe that there are no words of forfeiture, and it would be a very strong thing to import a forfeiture where the parties have not provided for one and where there is no rule of law attaching forfeiture to a particular Act.

Suit for cancelment of a mortgage deed and to eject on the ground of breach of condition to pay a life annuity was held to fall under Article 144 of Act IX of 1871.

(b) In *Sadha v. Mussumat Bhagwani*,⁽²⁾ in November, 1873, *M* sued for the cancelment of a deed of usufructuary mortgage executed by her in November, 1856, and for the ejectment of the mortgagees on the ground of the breach of a condition in the deed that the mortgagees should pay her a life annuity of Rs. 15, during the term of the mortgage (20 years) and also after foreclosure, otherwise, on any failure, they would be liable to ejectment and to

(1) I. L. R., 8 Calc., 224. | (2) 7 N.-W. P. H. C. R., 53.

Description of suit.	Period of limitation.	Time from which period begins to run.
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the forfeiture of the mortgage. It did not appear that any payments of the annuity had been made. The plea of limitation having been taken, the Lower Courts held that the suit was within time as the case fell within Article 148, schedule 2, Act IX of 1871. It was held in Special Appeal that, assuming that they were in error in so holding, the case was governed by Article 144, and the provisions of section 23 enabled the plaintiff to treat each failure to pay the stipulated annuity as a new breach, giving a new right to eject, and that the suit was therefore within time. It was also held, that if there had not been so many successive breaches, and if the defendants had at any time brought into court the arrears with interest or offered to do so, the courts below, although they could not have passed a decree for the money, might have withheld a decree for enforcing the forfeiture.

Section 23 of Act IX of 1871, enabled plaintiff to treat each failure to pay as a new breach.

144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.
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(a) (No. 145, Act IX; s. 1, c. 12, Act XIV.) Markby, J., observes: "By adverse possession, I understand to be meant possession by a person holding the land on his own behalf, of some person other than the true owner having a right to immediate possession. If by this adverse possession the Statute is set running, and it continues to run for twelve years, then the title of the true owner is extinguished and the person in possession becomes the owner. One who holds possession on behalf of another, does not by a mere denial of other's title make his possession adverse so as to give himself the benefit of the Statute of Limitation." *Bejoy Chunder Bannerjee v. Kally Prosonno Mookerjee*.⁽¹⁾

What is meant by adverse possession?

One who holds on behalf of another, does not by mere denial of other's title make his possession adverse.

(1) I. L. R., 4 Calc., 327.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

"Adverse possession" is full proprietary possession and not enjoyment of rents by mortgagor.

Defendant's exclusive possession of the unmortgaged moiety from father's death in 1861, was held adverse while exclusive enjoyment of rents of the mortgaged moiety was held not adverse till redemption in 1877.

P.C. by remarking that there was no distinction between the right of a purchaser at court sale and that of a private purchaser, simply expressed their disapproval of the view of C. H.

(b) In *Umr-un-nissa v. Muhammad Yar Khan*,⁽¹⁾ plaintiff and defendants were, according to the Mahomedan Law of inheritance, heirs of their father who died in 1861, leaving a zemindari estate, a moiety of which at the time of death was in the possession of a mortgagee. The defendants since caused their names to be recorded as heirs to the exclusion of the plaintiff and appropriated to their own use continuously for more than twelve years the profits of the unmortgaged moiety and the malikhana paid by the mortgagee of the mortgaged property. In 1877, the defendants redeemed the moiety with their own money. In 1878, the plaintiff sued for possession of her share of the estate. The court rejecting his claim for share in the unmortgaged moiety on the ground of adverse possession, held, with reference to the mortgaged moiety, that the defendant's possession did not become adverse within the meaning of this Article, on the death of the father in 1861, but on the redemption, in 1877, it became adverse, meaning the same sort of full proprietary possession as the plaintiff claimed, and that the suit with respect to that moiety was therefore within time.

(c) In *Sobhag Chand Gulab Chand v. Bhai Chand*.⁽²⁾ Westrop, O. J., observes, in *Raja Enayet Hossain v. Girdhari Lall*,⁽³⁾ "the question was one of limitation, and what their Lordships said—was that there was, as to limitation, no distinction in favour of the purchaser at a judicial sale between his right and that of a private purchaser, and in this remark they were simply expressing their disapproval of the view of the High Court of Calcutta, that, although the suit of a private purchaser might have been barred by lapse of time, the suit of a purchaser at a judicial sale was not so barred. In

(1) I. L. R., 3 All., 24. | (2) I. L. R., 6 Bom., 206.

(3) 12 Moore's Ind. App., 366.

Description of suit.	Period of limitation.	Time from which period begins to run.
<div data-bbox="446 272 612 329">PART VIII. Twelve years.</div>		

the second case, *Anundo Moyee v. Dhonendro*,⁽¹⁾ the Privy Council held, that the possession of a person who purchased at a court sale in execution of a decree against a mortgagor is an adverse possession, inasmuch as such purchaser claims to be the owner of the whole estate whether he be so or not, and that, consequently, a suit against such a purchaser is barred after twelve years." "On the other hand, the view taken by the Privy Council in *Radanath Doss v. Gisborne*,⁽²⁾ as to who is a *bonâ fide* purchaser for valuable consideration within section 15 of Act XIV of 1859, and the remarks there of Lord Cairns as to what are the indispensable averments in a plea of purchase for valuable consideration without notice tend strongly to show that their Lordships would hold that a purchaser at an ordinary judicial sale under Act VIII of 1859, under a mere money decree could not be regarded as a *bonâ fide* purchaser of an absolute interest without notice, and could not truly make the averments requisite for a plea that he was so.

P. C. held that possession of a purchaser at court sale in execution of a decree against mortgagor is adverse.

The remarks of P. C. in another case tend to show that they would hold that a purchaser at an ordinary sale under Act VIII of 1859, under a money decree could not be regarded as a *bonâ fide* purchaser of an absolute interest without notice.

(d) In *Kristo Comul Mitter v. Suresh Chunder Deb*,⁽³⁾ plaintiff's brother was declared an insolvent in 1860, but never obtained his final discharge. In 1862, by the death of his father, he became entitled to certain family property as one of three sons, and continued in undisturbed possession, and the Official Assignee never interfered or made any claim so long as the property was undivided. In 1876, the plaintiff and his third brother sued for division and obtained a decree in 1877, and the insolvent remained in possession of his divided share, the Official Assignee making no claim. In June, 1880, the insolvent sold his interest to the defendant, who was found to have purchased it in good faith without notice

Insolvents possession of after acquired property for twelve years held adverse to the Official Assignee.

(1) 14 Moore's Ind. App., 101. | (2) 14 Moore's Ind. App., 1.

(3) I. L. R., 8 Cal., 556.

Description of suit.	Period of limitation.	Time from which period begins to run.
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An insolvent who has not obtained final discharge has power with respect to after acquired property to buy and sell.

Collector's possession of land for revenue is not adverse by reason of his paying the surplus collection to another claimant.

Possession by one of three donees, without intimation to the other two that such was opposed to their right, was held not adverse.

and paid full value. In December, 1880, the plaintiff purchasing the same share from the Official Assignee for a small sum, and with full knowledge of the defendants purchase, sued for possession. It was held that the insolvent's possession from 1862, was adverse to the Official Assignee so as to bar his title by lapse of time. It was further held, that subject to the right and claim of the Official Assignee, and so long as he does not interfere, an insolvent who has not obtained his final discharge has power, with respect to after acquired property, to buy and sell, and give discharges, and do all other acts which he could have done before insolvency.

(e) In *Karan Singh v. Bakar Ali Khan*,⁽¹⁾ P. C. held under the corresponding Article (145) of Act IX of 1871, that where the Government, in the Revenue Department, has taken possession of land, it is the duty of the Collector, after payment of the revenue and the expenses of the collection, to pay over the surplus proceeds of the estate to the true owner. The Collector's possession does not become adverse to the owner by reason of his making this payment to another claimant.

(f) In *Dadoba v. Krishna*,⁽²⁾ the plaintiffs sued for possession of a third share in certain immoveable property, alleging that they were entitled to it under an agreement dated the 1st December, 1848, and executed by one Balaji, deceased. By that document, Balaji appointed as successors to his estate, after his death, three persons *B*, *R*, (plaintiff's father) and *S* on condition that they should maintain him during the remainder of his life, pay off his debts and perform his obsequies. Accordingly one of the three donees, *B*, lived with Balaji and managed the property. Balaji died in 1852. *B* continued to manage the property till his own death in 1865,

(1) I. L. R., 5 All., 1. | (2) I. L. R., 7 Bom., 34.

Description of suit.	Period of limitation.	Time from which period begins to run.
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when *B*'s eldest son took up the management, and he and the other heirs of *B* subsequently sold a portion of the property. The suit was principally against the sons and heirs of *B* and the purchaser. The plaint was filed on the 8th September, 1873, and alleged (*inter alia*) that *B* managed the property as trustee. The defence substantially was, that *B* held it exclusively as owner and not as trustee, and that the suit was barred by limitation. Both the Lower Courts dismissed the suit as barred by limitation, holding that *B*'s possession was adverse and that *B* had no possession or enjoyment within twelve years previously to the institution of the suit. On appeal the High Court held, that *B*'s possession, whether it commenced before the death or only on the death of Balaji, was held after that event consistently with and in fulfilment of the agreement. *B* having entered into possession and been left in possession in the first instance in accordance with the contract, could not change the character of the possession by his mere will. He did not intimate to *R* or *S* that he repudiated the contract and intended to go into possession in opposition to any rights which they might assert. As he entered and continued to hold in a character consistent with the subsistence of their rights, they were never called on to eject him or ^{not be} to enter process to establish rights which were not denied or imp^{to whi} proper

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(1) I. L. R., 9 Cal.,

here subsisted any contract, express parties in and out of possession might be referred as legal and pronounced adverse.

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zara lease does.

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While a contract subsisted between parties in and out of possession to which the possession might be referred as legal, it could not be pronounced as adverse.

C. H.
Trespasser's possession during the currency of an begins to after of

Description of suit.	Period of limitation.	Time from which period begins to run.
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come adverse to the Zemindar (lessor) until the expiration of the term, and a suit for possession may be brought within twelve years of that date under the provisions of this Article.

Possession by purchaser from mortgagor and by pre-emptor under decree for pre-emption held not adverse to a prior mortgagee whose right to possession was not barred.

(h) In *Durga Prasad v. Shambhu Nath*,⁽¹⁾ the mortgagee had a right to immediate possession under a registered deed of mortgage dated May, 1869, but by arrangement between the parties, the mortgagors remained in possession, the right of the mortgagee to obtain possession as against them being, however, kept alive. In October, 1869, the mortgagors sold the property, and thereupon one *R* brought a suit to enforce the right of pre-emption in respect of the sale and obtained a decree, and got the property and sold it in 1871 to *D*. In 1883, the mortgagee brought a suit against *D* to obtain possession under his mortgage. It was contended that the pre-emptor and his vendor having been in adverse possession of a share of the village for more than twelve years, the suit, as regards that share, was barred by limitation. It was held that the position of a person who purchased property by asserting a right of pre-emption was not analogous to that of an auction-purchaser in execution of a decree, but that such person merely took the place of the original purchaser and entered into the same contract of sale with the vendor that the purchaser was making, and that there was privity between him and the vendor, and he came in under the vendor, and his holding must be taken to be in acknowledgment of all obligations created by his vendor. It was further held, that although it would be material to show that the defendant had in any way by fraud been kept out of knowledge of the mortgage, his not having notice of it would not otherwise affect his liability, inasmuch as the principle on which the Courts of Equity in England to *manō* interfere against *bond fide* purchasers for a

The position of a person who purchases by asserting a right of pre-emption is not analogous to that of an auction-purchaser in execution of a decree.

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(1) I. L. R., 8 All., 86.

Description of suit.	Period of limitation.	Time from which period begins to run.
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valuable consideration without notice, when clothed with the legal title, had no applicability in the courts of British India.

(i) In *Shiro Kumari Debi v. Govind Shaw Tanti*,⁽¹⁾ a declaration of title may be made upon proof of twelve years' adverse possession and that such declaration cannot however be given on a title not distinctly stated in the plaint or the issues. When a plaintiff claims a title upon twelve years' possession, he must draw the attention of the defendant to the fact that he is going to claim a declaration upon that title in order that the defendant may give his own evidence and scrutinize the evidence of the plaintiff upon that point, and see whether possession for twelve years is proved, and whether he can contradict it during any portion of the period. He must at least clearly raise that question in the issues in the case.

Declaration of title may be made on twelve years' adverse possession distinctly stated in plaint or raised in the issue. (April 1877.)

(j) Suit for specific performance of contract of sale and for possession is not governed by this Article, but by Article 113. The contention that, so far as the suit was for possession of immoveable property, it should be governed by Article 144, was invalid. The right to possession sprang out of the contract of sale and the relief by giving possession was comprised in the relief by specific performance of the contract of sale, and could not be governed in this suit by any but Article 113. But assuming the suit might, so far as limitation was concerned, be entertained, still as the right to possession was dependent on the contract of sale, if the suit could not be maintained for specific performance of the contract, it could not be maintained for possession of the property sold under the contract. *Muhiuddin Ahmad Khan v. Majlis Rai*.⁽²⁾ In *Sheo Prasad v. Udai Singh*,⁽³⁾ it was held that a

Suit for specific performance of contract of sale and for possession falls under Article 113. But vendee's suit for possession when vendor has not expressly promised to put vendee in possession falls under this Article. (Feb. 1884.)

(1) I. L. R., 2 Calc., 418. | (2) I. L. R., 6 All., 231.
(3) I. L. R., 2 All., 718.

Description of suit.	Period of limitation.	Time from which period begins to run.
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- vendee's suit for possession against the vendor who had to recover possession under a decree and who had not in the conveyance expressly promised or undertaken to put the vendee in possession, was not a suit for the specific performance of a contract. It is governed by Article 136 or 144. (See *Note F*, Article 113, p. 454.)

Suit by trustee held barred by twelve years' possession by defendant as trustee.
(Jany. 1884.)

(k) Where a person purchased from one of the two co-trustees of a temple, the right to manage the affairs of the temple and enjoy certain land which formed the endowment of the temple and held possession of it for more than twelve years, it was held by the Madras High Court that a suit brought by the other trustee against such person to recover the land was barred by limitation. *Kannan v. Nilakandan*.⁽¹⁾

Judgment-debt or suing in a different capacity for property sold in auction has twelve years.
(Dec. 1884.)

(l) *J* obtained a money-decree against *G* as the representative of his father and mother and bought the plaintiff land in the execution of the same. *G* subsequently brought a suit for possession of the same property as trustee under a deed of gift to a family idol. *J* contended that the suit being brought one year after the order for sale, was barred by the Statute of Limitation. Held, that the plaintiff suing in a different capacity can bring the suit within twelve years from the date of dispossession, there being no necessity for setting aside the court sale; *Rupa Jagshet v. Krishnaji Govind*.⁽²⁾

Suit for land by avoidance of a deed of gift falls under this Article, the suit being in substance one for the recovery of real property.
(August 1883.)

(m) In *Hazari Lal v. Jadaun Singh*,⁽³⁾ plaintiffs sued for possession of real property by right of inheritance under Hindu Law by avoidance of a deed of gift said to have been fraudulently and collusively brought about. It was held, that in substance this was a suit for the recovery of real property, and that a prayer for the avoidance of a deed of gift would not alter its nature and character, and

(1) I. L. R., 7 Mad., 337. | (2) I. L. R., 9 Bom., 169.

(3) I. L. R., 5 All., 78.

Description of suit.	Period of limitation.	Time from which period begins to run.
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subject it to a shorter period of limitation, and that Article 91 apply to suits of the kind mentioned in section 39 of the Specific Relief Act.

(n) In *Nathu v. Badri Das*,⁽¹⁾ the plaintiff alleging that certain immoveable property belonging to his father had been sold in execution of a decree as the property of another, sued the purchaser to have the sale set aside and to recover possession of the property. It was held that the suit was one for possession of real property to which the period of limitation of twelve years was applicable.

Suit for possession cancelling court sale made as another's property, falls under this Article. (June 1883.)

(o) In *Debi Prasad v. Jafar Ali*,⁽²⁾ the plaintiff in possession of certain land who lost in August, 1865, his revenue suit to have declared his non-liability to pay rent to the defendant, and who, nevertheless, paid rent to the defendant up to August, 1877, instituted this suit on the said date for a declaration of his proprietary right to the land as against the defendant. It was held that the suit was governed by 145 of Act IX of 1871, as the suit was substantially a suit for possession of immoveable property, although the person in possession asked for a declaration of his right. It was further held, that Articles 14 and 15 of Act IX of 1871 did not apply, as there was no binding decree of a Revenue Court which the plaintiff was bound to have set aside within one year.

Plaintiff's suit for declaration of proprietary right to land in his possession held to fall under Article 145 of IX of 1871 which corresponds to this. (June 1890.)

Suit for declaration is substantially a suit for possession.

(p) A Hindu who held certain property died before 1838, having instituted a worship and celebration of festivals. His son died in 1838, leaving a widow and a widowed mother. One T, father of the minor respondents, was one of the relations who expected to be heirs on the death of both the widows. In 1841, the daughter-in-law by an agreement of gift transferred her interest in her husband's property to her mother-in-law for the performance of the worship and the festivals. In 1865, a

P. C.
Donee of a daughter-in-law's right might sue auction purchaser of mother-in-law's rights sold for her debts within twelve years of mother-in-law's death. (July 1884.)

(1) I. L. R., 5 All., 614. | (2) I. L. R., 3 All., 40.

Description of suit.	Period of limitation.	Time from which period begins to run.
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creditor of the mother-in-law in execution of his decree sold her interest, and one *K* bought it and obtained possession of the property. The mother-in-law died in 1867, and after her death, the daughter-in-law and *T* executed to the plaintiff's wife an agreement in February, 1876, giving the property in question and alleging that it reverted to them on the death of the mother-in-law. The plaintiff's wife died in 1878, and the plaintiff sued the auction-purchaser of the mother-in-law's right for possession. The Court of First instance rejected the suit as barred by Article 144, as it was of opinion that the auction-purchaser's possession for more than twelve years before the suit was adverse both to the mother-in-law and the daughter-in-law. Their Lordships of the Privy Council held that the purchase at the sale in execution of the right and interest of the mother-in-law could not, as between the purchaser and the daughter-in-law, be considered to fall under Article 134, and that under Article 144, which gives twelve years from the time that possession of the defendant becomes adverse to the plaintiff, possession during lifetime of the mother-in-law was not adverse to the daughter-in-law and that the suit was brought within twelve years of the death of the mother-in-law: *Kalidas Mullick v. Kanhaya Lal Pundit*.⁽¹⁾

Person failing to impugn within time, an instrument affecting his rights to real property, might sue for possession within the longer period allowed provided he can prove that the instrument is null and void so far as his interests are concerned.
(August 1885.)

(q) In *Raghubar Dyal Sahu v. Bhikya Lal Misser*,⁽²⁾ the father of the plaintiff and his two brothers who were minors in the capacity of their guardian borrowed a certain sum of money on the 19th May, 1873, by a bond to protect their estate. The creditor on the 18th August, 1876, obtained a decree against the plaintiff and his two brothers, one of whom had then attained his age. In execution of that decree, the property that had been mortgaged by the bond as well as another was sold and

(1) I. L. R., 11 Cal., 121. | (2) I. L. R., 12 Cal., 69.

Description of suit.	Period of limitation.	Time from which period begins to run.
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the mortgagees became the purchasers. In 1880, the plaintiff attained his majority, and in 1883 brought the suit to have the court sale set aside and to be put in possession of the property. It was contended that the suit was barred because it was not brought within three years from the date of sale under the decree. It was held, that where a period is allowed by the Law of Limitation, within which an instrument affecting the persons' rights or immoveable property must be impugned, and such person fails to impugn such instrument within that period, he will not be precluded from availing himself of the longer period allowed for the recovery of immoveable property, provided that he can prove that such instrument is null and void, so far as his interests are concerned.

(r) In *Dharm Singh v. Hurpershad Singh*,⁽¹⁾ plaintiff claimed certain land as part of a plot of ground descended to them from one *R*. The defendants contended that the plot of ground was acquired by *R*'s father, who had given to his daughter's son the portion in the suit by a deed of gift and that they were entitled to it as his heirs, and that the suit was barred as they had been in possession for more than twelve years. The Lower Appellate Court decreed the property to plaintiff. It was held by the High Court that where two adverse parties are each trying to make out a possession of twelve years, and the evidence is conflicting and conclusive on either side, the presumption that possession goes with the title must prevail.

(s) In *Ram Prosad Janna v. Lakhi Narain Pradhan*,⁽²⁾ defendants, who were out of possession of their shares of a certain Mahal in 1871, sold a portion of it to the plaintiff on the 7th June, 1871, agreeing to take proceedings jointly with the plaintiff to recover the property. The defendants neglected to do so. The plaintiff

Where evidence as to possession is conflicting the presumption that possession goes with title, held to prevail. (Aug. 1885.)

C. H.
Suit for possession against vendor himself when he recovers possession, falls under this Article. (July 1885.)

(1) I. L. R., 12 Calc., 38. | (2) I. L. R., 12 Calc., 197.

Description of suit.	Period of limitation.	Time from which period begins to run.
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alleged that it had lately come to his knowledge that since June, 1871, the defendants had amicably recovered possession and had their names registered in the Collectorate in March, 1879. On the 4th May, 1883, the First Court found that the vendor had been out of possession about eight or nine years at the date of the sale and that the suit having been brought about 21 years after the vendor's dispossession, was barred under Article 136. It was held by the High Court that Article 136 is not intended to apply to a suit brought against the vendor himself upon his recovering possession and that the suit was governed by this Article and was not barred by limitation. In *Sheo Prasad v. Udai Singh*,⁽¹⁾ which was a suit of a similar nature, A. H. held that either this Article or Article 136 was applicable and that the suit was within time.

A. H. held that such suit was governed by this Article or Article 136.

Vendee's suit for property outstanding on ijara for a term on the date of purchase has twelve years from expiry of the term. (Aug. 1883.)

(t) In *Krishna Gobind Dhur v. Hari Churn Dhur*,⁽²⁾ plaintiffs purchased in June, 1862, land in dispute which was held on ijara for a certain term of years which was to expire in April, 1868. During the currency of the ijara, ijaradars were dispossessed. The plaintiff's brought the suit in 1880, and the Lower Appellate Court finding that the defendants other than the ijaradars had been in possession previously to the sale in 1862, and that there was no collusion between the ijaradar defendants, and the other defendants, rejected the suit as barred. It was held in appeal that the plaintiff's cause of action arose on the expiration of the ijara and that the suit, whether governed by this Article or by Article 139, was not barred, and that possession adverse to the ijaradars was not possession adverse to the plaintiffs.

Possession adverse to the ijaradars was not adverse to plaintiff.

Suit against son to enforce decree against father charging

(u) In *Arunachala v. Zemindar Sivagiri*,⁽³⁾ plaintiff, in 1867, obtained a decree against the defendant's father,

(2) I. L. R., 2 All., 718.

(2) I. L. R., 9 Calc., 367.

(3) I. L. R., 7 Mad., 328.

Description of suit.	Period of limitation.	Time from which period begins to run.
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the holder of an impartible zemindari by consent, to the effect that the Zemindar undertook to pay a certain sum by yearly instalments and hypothecated certain land as security. A memorandum of this decree was registered under section 42 of Act XX of 1866. The last instalment fell due in February, 1870, and the decree was kept alive against the Zemindar up to his death in 1873. Upon the death of the Zemindar, proceedings in execution were taken against his son, who succeeded to the zemindari, but were set aside on appeal. In January, 1882, a suit was brought against the son to recover the amount of the last instalment due by his father under the decree of 1867. It was held that cause of action against the son only arose on the father's death in 1873, and that as the suit was brought within twelve years from the date on which the debt charged on real property become due, the suit was not barred.

the money on real property by consent, held to be in time when brought within twelve years from father's death. (Dec. 1883.)

(v) In *Madhava v. Narayana*,⁽¹⁾ the plaintiff having removed in 1875 his father, the 1st defendant, a Namboodry of North Malabar, from management, sued in 1883, to recover lands demised by him in January, 1868 to the 2nd and 3rd defendants' ancestor in January, 1868. The plaintiff alleged that the kanom not being granted for family necessity was not binding on the family. Defendants two and three, pleaded that the suit to eject was barred and that the plaintiff's remedy was to redeem the kanom. In this case it is observed that the defendants who came into possession under the demise on which they rely were either trespassers or kanomdars, and their possession for the statutory period in either capacity adversely to the family was a bar to their ejection. Muthusawmy Ayer, J., observes: "under the Act of Limitation, 60 years is the Statutory period for enforcing a

Suit to eject without redemption alleging invalidity of kanom held barred after twelve years. (October 1885.)

(1) I. L. R., 9 Mad., 244.

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right to redeem, whilst twelve years is the ordinary period for ejecting a person from immoveable property or some interest in it when the right to redeem is admitted and the right to eject is denied. I consider that the latter right should be dealt with under the twelve years' rule. The cases of *Dinomoney Dabea v. Doorgapersad Mozoomdar*,⁽¹⁾ and *Maidin Saiba v. Nagapa*,⁽²⁾ show that a party who cannot by his admission plead prescriptive title in regard to general ownership may rely on it in regard to a subsidiary interest claimed by him." Hutchins, J., observes: "that adverse possession for twelve years of a limited interest in immoveable property is a good plea to a suit for ejectment to the extent of that interest." The suit was rejected.

Observations of
Hutchins, J.

A priest's suit to recover land mortgaged by his deceased predecessor who had a life estate, held to have twelve years from predecessor's death from which possession becomes adverse.
(May 1886.)

In this case Government had issued in 1862, a sanad, declaring the property to be private property, and withdrew it in 1868, granting a new one declaring the property to be service emolument appertaining to office.

(W) In *Jamal Saheb v. Murgaya Swami*,⁽³⁾ the plaintiff's predecessor in office as jangam, who had a life estate in certain properties appertaining to the Math, originally mortgaged two items of property to A in 1863. In July, 1866, the priest obtaining a fresh loan on the same security from A's son, executed to him a fresh deed which superseded the first one. A's son assigned his mortgage to the defendant in 1871, and the plaintiff's predecessor died in January, 1874, and the plaintiff sued for possession in February, 1882. The property was not alienable by the jangam of the Math beyond his lifetime as it was held on a tenure of successive life estate. It was held that the suit was not barred, as the cause of action accrued to the plaintiff on his predecessor's death, and the suit was brought within twelve years from that event. In this case the Government had originally, in 1862, issued a sanad to the plaintiff's predecessor declaring the land to be his private property and withdrew the sanad in 1868 and

(1) 12 B. L. R., 274.

(2) 1. L. R., 7 Bom., 96.

(3) 1. L. R., 10 Bom., 34.

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granted another, declaring the land to be service emolument appertaining to the office of jangam.

(x) In *Kally Charn Sahoo v. The Secretary of State for India in Council*,⁽¹⁾ it was held that, where a person can show that he had been in possession of certain lands prior to such lands becoming diluviated, his possession must be considered as continuing during the time of diluvion until such time as he becomes dispossessed by some other person; and in such a case the onus lies upon the dispossessor to show that he has acquired a title under the Law of Limitation which has put an end to the rights of the original possessor. White, J., observes, that owners of land which has suffered from successive diluviations and reformations, must, if they wish to preserve their rights, bring their suit within twelve years of the time when adverse possession is first taken of land reforming on the original site, whether at the time of suit the land is capable of occupation or is lying under water in consequence of a second diluvion. In *Mano Mohun Ghose v. Mothura Mohun Roy*,⁽²⁾ it was held that the submergence of the land after diluvion ought to be presumed until the contrary is shown, and that the onus of proving reformation before twelve years and adverse possession, is on the defendant pleading the same.

Diluvion.
Suit for diluvion has twelve years from adverse possession first taken of land reforming on the original site, whether or not it is capable of occupation on the date of the suit.

Submergence
after diluvion ought to be presumed until contrary is shown.

(y) In *Lopez v. Muddun Mohun Thakoor*,⁽³⁾ the plaintiff, Felix Lopez, was the proprietor of a very considerable estate, a Mouza, on the banks of the Ganges. By the year 1840, by reason of the continued encroachment of that river, it was wholly submerged, and it was, to adopt an expression used in this class of cases in India, "diluviated;" that is, the surface soil, the culturable soil, was wholly washed away. After the lapse of some years, and

Doctrine in
Lopez's case is that diluviated lands reforming on their original site, remain the property of their original owner.

What is meant
by diluviated?

(1) 1 L. R., 6 Calc., 725. | (2) 1 L. R., 7 Calc., 225.

(3) 13 Moore's L. A., 467

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Plaintiff says the Ganges which swallowed his property has again yielded it up.

after one temporary recession and re-encroachment which has occurred in the interval, the water has ultimately retired, and the land, having been for some time in a state described as admitting of only temporary cultivation by hand sowing, has become hard and firm soil, capable of being cultivated in the usual manner. The plaintiff says: "This was my property. The Ganges, which swallowed it, has again yielded it up, and I claim my property, which, having been buried and lost to sight, has again reappeared."

English Law bearing on the subject.

(g) "The rule of the English Law applicable to this case, is thus expressed in a work of great authority, *Hale, de Jure Maris*, p. 15:—'If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that yet there be reasonable marks to continue the notice of it; or though the marks be defaced, yet if by situation and extent of quantity and bounding up on the firm land, the same can be known, or it be by art or industry regained, the subject doth not lose his property.' 'If the mark remain or continue, or the extent can reasonably be certain, the case is clear.' And in another place, p. 17, he says: 'But if it be freely left again by the reflux and recess of the sea, the owner may have his land as before, if he can make out where and what it was; for he cannot lose his propriety of the soil, although it for a time becomes part of the sea, and within the Admiral's jurisdiction while it so continues.'"

This principle is founded on universal law and justice.

(2-a) "The principle is one not merely of English Law, not a principle peculiar to any system of Municipal Law, but it is a principle founded on universal law and justice; that is to say, that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava or ashes from a Volcano, or a field covered by the

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sea or by a river, the ground, the site, the property, remains in the original owner. There is, however, another principle recognized in the English Law, derived from the Civil Law, which is this,—that where there is an acquisition of land from the sea or a river by gradual, slow, and imperceptible means, there, from the supposed necessity of the case, and the difficulty of having to determine, year by year, to whom an inch, or a foot, or yard, belongs, the accretion by alluvion is held to belong to the owner of the adjoining land, *Rex v. Lord Yarborough* (2. Bligh, N. R, 147). And the converse of that rule was, in the year 1839, held by the English Courts to apply to the case of a similar wearing away of the banks of a navigable river, so that there the owner of the river gained from the land in the same way as the owner of the land had in the former case gained from the sea. (*In re the Hull and Selby Railway*, 5 Mee and Wel. 327). To what extent that rule would be carried in this country, if there were existing certain means of indentifying the original bounds of the property, by land marks, by maps, or by a mine under the sea, or other means of that kind, has never been judicially determined."

Another principle is that if there be acquisition of land from sea or river by gradual means, the accretion by alluvion belongs to the owner of the adjoining land.

Converse of that rule was applied by English Courts to the case of similar wearing away of the banks of a navigable river.

To what extent that rule would be carried in this country has not been judicially determined.

This principle of law, so far as relates to accretion, has, to some extent been made part of the positive written law of India, and it is to be found in the Regulation XI of 1825, a Regulation for declaring the rules to be observed on the determining of claims to lands gained by alluvian or by the dereliction of a river, or the sea. In this case, applying the principles of English Law, and following *Mussumat Imam Bandi v. Hurgovind Ghose* (4 Moore's I. A., 403,) it was held that the land washed away and afterwards reformed on the old ascertained site, was not land gained by increment, within the meaning of section 4 of Bengal Regulation XI of 1825.

This principle of law relating to accretion, has to some extent, been made part of the positive written law of India.

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Doctrine in Lopez's case does not apply when title has been acquired by adverse possession or otherwise. (Nov. 1877.)

(2-b) In *Radha Proshad Singh v. The Collector of Shahabad*,⁽¹⁾ it was held that the doctrine in Lopez's case does not apply to lands, in which, after their reformation, an indefeasible title has been acquired by long adverse possession, or otherwise, and that where a plaintiff relies on an alleged adverse possession of lands for more than twelve years after their reformation, the question to be decided is whether he has had such possession for twelve years.

Suits for property from a person who had originally been in permissive occupation held to fall under this Article. (August 1880.)

(2-c) In *Gobind Lall Seal v. Debendro Nath Mullick*,⁽²⁾ it was held that a suit for the recovery of immoveable property against a person who had originally been in mere permissive occupation or possession accorded on the ground of charity or relationship, is governed by this Article and not by Article 142. In this case, plaintiffs alleged that their predecessor in title who died in 1854, had permitted the defendant's father, who was a friend, and the object of his bounty, some 30 years ago, to occupy a house without paying rent for it, and that since his death, 20 years before the suit, the defendant had been permitted to reside without paying rent. The defendants contended that their occupation was by virtue of a gift to their father. It was held that as the defendant's possession has been permissive only, the plaintiffs were not barred by limitation, and that the suit was governed by this Article and not by Article 142. Garth, C. J., observes: "Where the owner, in the exercise of his own proprietary right permits some other person to occupy his land, or to receive his rents, then, whether the relation of landlord and tenant exists between the parties or not, I consider that the possession of the owner is not discontinued, because, under such circumstances, the possession of the occupier is the possession of the owner."

(1) I. L. R., 3 Calc., 796.

(2) I. L. R., 6 Calc., 811.

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(2-d) *Burma Moye Dassee v. Dinobundhoo Ghose*,⁽¹⁾ was a suit by a mortgagee to obtain possession after foreclosure instituted more than twelve years after such mortgagee had upon default, become, under the words of the deed entitled to possession, but within twelve years of the date of the expiry of the year of grace granted under the foreclosure proceedings. It was held under the corresponding Article 145 of Act IX of 1871, that the period of limitation must be calculated from the date of the expiry of the year of grace and not from the time when the default was first made.

Mortgagee's suit for possession after foreclosure held to have twelve years from the expiry of the year of grace. (Dec. 1880.)

(2-e) In *Kasu Munnissa Bibee v. Nilratna Bose*,⁽²⁾ *B* obtained a Patni lease of certain land from the Zemindar in September, 1865, and in February, 1867, purchased the Zemindar's interest at an auction sale by the Sheriff of Calcutta, who executed a conveyance in April, 1867. *C*, who had purchased the property in execution of a decree made in November, 1865, on a mortgage dated January, 1865, sued *B* in March, 1879, for Khas possession. *B* pleaded adverse possession. It was held that *B*'s possession as purchaser could not be considered to have commenced before the date of the Sheriff's conveyance and that the plea of adverse possession was bad, the suit having been brought within twelve years from the date of the conveyance.

Possession of purchaser in Sheriff's sale held to commence from the date of the conveyance by the Sheriff though purchaser already held it under a lease. (May 1881.)

(2-f) In *Gopinath Chobey v. Bhugwat Pershad*,⁽³⁾ the plaintiffs, *C* and *D*, sought for a declaration of their right to 6 annas of the malikana money of dearah of Afzulpur which had formed in front of what they alleged to be their estate and to have their names registered in the Collector's office in place of the defendants. The facts of the case are as follow: Previous to 1825, dearah

Plaintiffs' suit for declaration of right to malikana and for reversal of Collector's order refusing to register their names held barred either by this Article or by Article 131 or 120 as opponent enjoyed

(1) I. L. R., 6 Calc., 564. | (2) I. L. R., 8 Calc., 79.

(3) I. L. R., 10 Calc., 697.

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malikana adversely from 1866.
(May 1884.)

X accreted to mouza *Y*, and some time before 1860, the malik or owner of *Y* executed two conveyances in favor of *A* and *B* respectively. In 1860, *A* sued *B* in the Mun-sif's Court for possession of a share in *X*, which *B* claimed under his conveyance. In that suit *A* succeeded on the ground that *B*'s conveyance did not cover the share claimed by him in *X*, but merely covered the share in the mouza itself, whereas by his conveyance *A* had acquired the right to the share in *X* which he claimed. In 1866, the Collector refused to recognize *B*'s right to malikana payable in respect of the share in *X* which had been the subject of the suit in 1860, or to register his name in respect thereof, but acknowledged *A*'s right thereto, relying on the decision of the Civil Court in the suit between *A* and *B*. Subsequently *B*'s representatives, *C* and *D*, in 1876, sought to have their names registered in respect of the same malikana, but they were opposed by *E*, who alleged that *A* had been acting throughout as his benami-dar. The Collector referred the case under section 55 of Act VII of 1876, to the Civil Court, and the application of *C* and *D* was eventually disallowed. *C* and *D* thereupon, on the 5th November, 1880, instituted the present suit against *E* in the Court of the subordinate Judge, for a declaration of their right to the malikana, and for a reversal of the order refusing to allow their names to be registered in respect thereof. It was held—

144 would apply if it was a suit for possession of interest in real property.

(1) There being no allegation of dispossession, if it were contended that the suit was one for possession of an interest in immoveable property, this Article would apply;

131 would apply if it was to establish a periodically recurring right.

(2) If it were contended that the suit was for the purpose of establishing a periodically recurring right, pure and simple, Article 131 would apply, and the period must be reckoned from 1866,

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when the plaintiff was first refused the enjoyment of the right ;

- (3) If, however, it were said to be a suit to establish a periodically recurring right, and something in addition, inasmuch as the right carried with it a right to the property itself, if the parties consented to take a settlement when the time for concluding the next temporary or permanent settlement came, Article 120 must be held to apply.

120 would apply if it was for a periodically recurring right and something in addition.

But that, in any event, inasmuch as in the year 1866, the Collector refused to recognise *B's* right to the malikana and adverse possession, so far as possession could be taken of such an interest in immoveable property was then taken by *A*, or in other words by *E*, because it must be taken that the Collector since that date had been holding for *A*, whose right he had then recognised, after refusing to recognise the right claimed by *B*, the present suit having been instituted in 1880, was equally barred, whichever of the above Articles was held to apply.

The suit was barred which ever of the above Articles applied.

Collector's possession for one person after refusing to recognise the right of another is adverse to the latter.

(2-g) In *Juggobundhu Mukerjee v. Ram Chunder Bysack*,⁽¹⁾ it was held that delivery of possession by going through the process prescribed by section 224 of Act VIII of 1859, by proclamation, is the only way in which the decree of the court awarding to the plaintiff possession of land in the occupation of the tenants can be enforced ; and, as in contemplation of law, both parties must be considered as being present at the time when the delivery is made, such delivery must, as against the defendant, be deemed equivalent to actual possession. As against third parties, such symbolical possession is of no avail, because they are not parties to the proceedings. But if the defendant subsequently dispossesses the plaintiff by receiving the rents and profits, the plaintiff will

Symbolical possession under decree, of property in the occupation of the tenants, will avail as against defendants, but not as against third parties. (Feb. 1880.)

(1) I. L. R., 5 Cal., 584.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VIII. Twelve years.		

have twelve years from such dispossession to bring another suit.

Suit for land after formal possession under decree has twelve years from such possession.
(March 1879.)

(2-h) In *Umbicka Churn Goopta v. Madhub Ghosal*,⁽¹⁾ it was held that formal possession given to a decree holder by an officer of the court in execution of his decree, is sufficient to give him a fresh cause of action, and notwithstanding that he may never have obtained actual possession, he or his assigns may sue to recover possession at any time within twelve years from the time when such formal possession was given.

Son's suit against mother for father's property she managed supplying son's wants out of income, falls under this Article.
(Dec. 1879.)

(2-i) In *Kalley Churn Shaw v. Dukhee Bibi*,⁽²⁾ the parties are of Hulwall caste. In the year 1857, *A* died, leaving a son, the plaintiff *B*, and the defendants *C* and *D*, his widows, him surviving. *C* took possession of all *A*'s property. The plaintiff *B* was the son of *D*, and shortly after *A*'s death, *D* gave birth to another son, the plaintiff *E*. In 1865, *D* instituted a suit against *C* and *B* and *E*, alleging that *A* had left a will. In this suit, *C* claimed to be the heiress of *A*. No decree was made in the suit, which was compromised, by which the elder widow managed the family property generally and supplied the plaintiffs with all their wants out of the proceeds of the property. In November, 1877, *B* and *E* entered into possession of a shop, which had belonged to their father, and which had been managed, during their minority, by the defendant *C*. In 1879, the plaintiffs instituted the present suit, claiming to recover from *C* the property of *A* come to her hands. It was held that so far as the immoveable property was concerned, the case fell under this Article or 120, and as to moveable property, under Article 89 or 90.

Possession for twelve years by grantee of a married woman during, her hus-

(2-j) In *Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee*,⁽³⁾ defendant left his home in 1847, leaving his

(1) I. L. R., 4 Calc., 870. | (2) I. L. R., 5 Calc., 692.

(3) I. L. R., 4 Calc., 327.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

wife, then a child of nine or ten years and certain landed property. When she reached the age of 16, she formed an intimacy with plaintiff and made to him in 1855, a grant in perpetuity of a portion of the land reserving an annual fixed rent. As she got no information as to whether the defendant is alive or dead, she described herself the widow of the defendant. Plaintiff held possession paying rent up to 1872, when the defendant returned and ousted the plaintiff from the land. The plaintiff sued the husband, making the wife a *pro forma* defendant. The Lower Court allowed the plaintiff's claim on the ground that plaintiff's possession was not adverse to the wife and therefore not adverse to the husband. The High Court held that the position of the plaintiff was not that of a lessee, and that his possession, (although in its inception an act of trespass against the husband) having continued for upwards of twelve years had perfected his title to the lands.

band's long absence held as adverse to husband when he returned and claimed.

Plaintiff's possession, though an act of trespass in its inception, having continued for twelve years had perfected his title.

(2-k) House property in Lucknow, of which the Government had assumed possession as confiscated under the proclamations issued by Lord Canning and Sir James Outram in March, 1858, was released under an order passed on the 6th July, 1863, whereby the Government abandoned the confiscation and left the former owners to their rights. This property had previously to the confiscation belonged to one A. Lands in Oudh confiscated under Lord Canning's proclamation were, in October, 1863, directed to be settled with the heirs of A. In a suit brought in March, 1875, by a plaintiff who claimed a share of the house property and lands as one of the heirs of A against a defendant who was an heir of A, and who had obtained possession of the houses and lands under the orders passed for the release of the one and the settlement of the other, the defendant pleaded that

P. C.
Suit for share in lands settled with original owners's heirs after confiscation by Government has twelve years from the order for settlement.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

the entire property had come into her possession in 1856, under a deed of gift from A, and that the plaintiff's suit was barred by limitation.

Suit for a share in houses directed to be restored to original owners after confiscation should be dealt with as if there was no confiscation if defendant was in possession at the time of confiscation.

It was held by the Privy Council (first), in respect of the house property, that if the defendant was in possession at the time when the proclamations were issued, the question of limitation must be decided as if there never had been a confiscation; and (second), in respect of the lands, that no question of limitation could arise, since the suit was brought within twelve years from the date of the Government Order for settlement, under which alone any title to the lands could have been acquired by either of the parties. It is observed that the court should ascertain by referring to the kabuliat executed, whether the defendant took the settlement on her own behalf adversely to the other heirs, or whether she took it as a trustee for herself and the other heirs. *Mirza Jehan Kadr v. Afsur Bahu*.⁽¹⁾

Court should ascertain whether defendant took the settlement on her own behalf adversely to other heirs for as trustee for herself and others.

A jalkar held not an easement but an interest in immoveable property under Article 145 of Act IX of 1871.

(2-1) In *Parbutty Nath Roy Chowdhry v. Mudho Parœ*,⁽²⁾ which was a suit governed by Act IX of 1871, it was held that a jalkar is not an easement within the meaning of section 27 of Act IX of 1871, but is an interest in immoveable property within the meaning of schedule 2, Article 145 of that Act. Where the defendant had been exercising a right of fishing in certain water adversely to the plaintiff for more than twelve years, it was held, that a suit by the plaintiff for a declaration that he was entitled to the exclusive right of fishing in such water was barred by limitations.

For a suit by purchaser in Government sale for revenue, time runs from purchase.

(2-m) In *Narain Chunder v. Tayler*,⁽³⁾ plaintiff purchased in May, 1874, the land in the suit when sold for arrears of Government revenue under Act XI of 1859, and

(1) I. L. R., 4 Calc., 727. | (2) I. L. R., 3 Calc., 276.

(3) I. L. R., 4 Calc., 103.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

No special provision in the Limitation Act for such suits.

Suit for possession with mesne profits by establishing plaintiff's right is not affected by one year's limitation under section 27 of Bengal Act VIII of 1880.

A married woman held entitled to sue for her absent husband's property.

Digitized by Google

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

Minor's suit brought one year after attaining majority to recover property sold in execution of decree obtained against him during minority held not to fall under Article 12.

(2-p) On the 7th December, 1863, *A*, in execution of his decree, purchased and obtained symbolical possession of a certain 4-annas share, the property of his judgment-debtor. The 4-annas share was at the time under a mortgage to *B*, who happened to be in possession of the share as lessee. The term of the lease expired in 1870 or 1871. *A*, *C* and *D*, who were members of a Hindu joint-family, afterwards came to a partition of their common estate in which was included the 4-annas share, and one of them, *D*, sold his share in the 4-annas to *B*, who, on the 22nd December, 1871, purchased it in the name of *E*. *B* then brought a suit to enforce his mortgage against *F*, the heir of his mortgagor, and on the 8th December, 1873, obtained a decree, which, on special appeal, was confirmed by the High Court on the 21st December, 1875. On the 6th December, 1875, *A*, *C* and *E* had brought a suit for the possession of the 4-annas share against one Mokund Kishore, who had wrongfully taken possession of the property in 1870 or 1871, soon after the expiration of the lease to *B*. The suit was finally decided in their favor on the 29th July, 1879. In the meantime, that is somewhere in 1876, *B* had contrived to take possession of the whole share. In 1883, symbolical possession was obtained under the decree of the 29th July. *B* then executed his mortgage decree, and attached the 4-annas share excluding the portion which stood in the name of his benamidar. *Z*, the heir of *A*, having failed to make good his claim to a share of the property in the execution proceedings, now brought a suit for possession against *B*, on the 19th July, 1884. *Ram Kishore Gangopadhyaya v. Bandikaratan Tewari Chowdhry*.⁽¹⁾

Suit brought in 1882 by one who attained majority in 1879, to recover land

(2-q) *Vishnu Keshav v. Ramchandra Bhaskar*,⁽²⁾ was a suit brought by a minor one year after attaining

(1) I. L. R., 13 Cal., 203. | (2) I. L. R., 11 Bom., 130.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VIII. Twelve years.		

majority to recover property sold in execution of a decree obtained against him during minority. In 1870, a creditor of the plaintiff's father brought a suit against the plaintiff and obtained a money decree against him. The plaintiff was then a minor, and his estate was administered by the Collector of Ratnagiri. In this suit, he was represented by his mother and guardian. At the sale held in 1871, in execution of the decree, the property in question was purchased by the defendant, who obtained possession in 1876. In 1879, the plaintiff attained majority, and in 1882 he brought the present suit to recover the property from the defendant. The Lower Courts, regarding the suit as one to set aside the sale to the defendant, held that it was barred by limitation under Article 12 of schedule 2 of the Limitation Act XV of 1877. On appeal by the plaintiff to the High Court, it was held that Article 12 of the Limitation Act XV of 1877, did not apply, and that the suit was not barred. That Article applies only to cases in which the plaintiff would be bound by the sale if he did not succeed in getting it set aside, but in the present case the plaintiff was not bound by the proceedings in suit No. 573 of 1870, as he had not been properly represented as required by section 2 of Act XX of 1864.

sold by court in 1871, for a decree in which he had been represented by his mother as guardian, held not affected by Article 12.

Though minor was represented by his mother and guardian, proceedings were held not to bar him as he had not been properly represented as required by section 2, Act XX of 1864.

(2-r) The plaintiff, as the nearest heir of one Odhav Tulja, who died intestate in 1873, sued to set aside a sale of certain immoveable property belonging to the estate of the deceased, which had been sold on 3rd November, 1875, in execution of a money decree obtained by the defendant, Jagannath, against Bai Vakhat, the widow of Odhav Tulja. Bai Vakhat had married a second time in 1876, and her second husband was the brother of the purchaser at the execution sale. The plaintiff alleged that the decree had been fraudulently and collusively

Suit by the heir of an intestate to set aside court sale made under a collusive decree obtained against a widow and to recover property, held to fall under Article 95.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

obtained on a bond in Odhav Tulja's name which had been forged by Jagannath. The suit was brought on the 28th January, 1878, and the plaintiff prayed that the sale might be cancelled, having been made in order to defeat his rights: that he might be declared the heir of Odhav Tulja, and that possession of the property, with mesne profits, might be awarded to him. The Lower Courts dismissed the suit, holding that it was barred by Article 12 clause (a) of schedule 2 of the Limitation Act XV of 1877. On appeal to the High Court, it was held that Article 12 did not apply, for although the plaintiff sued to set aside a sale held in execution of a decree, he did so, not as one who would have been bound by the sale if the suit had not been brought, but in order to obtain a declaration that he was not bound by it, the decree under which the sale was held having been fraudulent and collusive, so that the cause of action could only have arisen when he became aware of the fraud. Article 95 of schedule 2 of Act XV of 1877 applied to the present suit, which was therefore in time. A widow of a deceased Hindu represents the estate of the reversioner for some purposes, but it is her duty not only to represent the estate, but to protect it. When a suit is brought on the ground that the widow did not in a former suit protect the interests of the person who was to take after her death, but collusively suffered judgment against herself and sale of her husband's property in execution, then if such person on that ground treats the sale as inoperative, and seeks for a declaration that it is not binding on him, Article 12 clause (a) of schedule 2 of the Limitation Act XV of 1877 does not apply to the suit. It was held, also, on the evidence, that the suit against Bai Vakhat was collusive, and that the sale in execution was in fraud of the plaintiff's right. He was therefore entitled to a decree declaring

A widow is bound not only to represent the estate but also to protect it.

When plaintiff treats the sale inoperative and seeks for a declaration that it does not bind him, Article 12 does not apply to the suit.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

that he was not bound by the sale of the 3rd November, 1875, in the suit brought by Jagannath against Bai Vakhat as representative of her deceased husband Odhav Tulja. Whether the plaintiff was entitled also to immediate possession of the property in the suit depended on the question whether Bai Vakhat's life estate was defeasible on her remarriage. She belonged to a caste in which remarriage was permitted. The following issue was accordingly sent to the Lower Court for trial:—"Whether by the usage of the country, the rights and interests of Bai Vakhat by inheritance in her deceased husband's property, the subject of this suit, ceased and determined on remarriage in 1876, as if she had then died." Parekh Ranchor Bai Vakhat.⁽¹⁾

(2-8) *Boojinatboo v. Sha Nagar Valab Kanji*,⁽²⁾ was a suit brought to set aside four instruments of mortgage creating a charge on immoveable property, and to recover possession. West, J., observes: "We do not think that Article 92, schedule 2 of Act IX of 1871 applies to a case like the present, in which the remedy sought is the recovery of land alleged to be wrongly withheld from the plaintiffs. Effect can be given to the Article in question by applying it to the well known class of cases of outstanding instruments by which, should they pass into the hands of an innocent holder for value, such holder would have a right to recover on them. Should the person who has given any such instrument leave it outstanding for any length of time, he would enable the holder to raise money, perhaps, on a false show of wealth. Here the defendants hold possession and use the bonds taken by them to guard it. The object of the suit is to deprive them of that possession and recover it for the plaintiffs. If it were possible for the court to award to the plaintiffs possession

Whether plaintiff was entitled to immediate possession depended on the question whether the widow's life estate was defeasible on her remarriage.

B. H.
Suit to set aside mortgage bonds on the ground of fraud and to recover possession of lands therein referred to, is not governed by Article 92 but by Article 144; 92 applies only where a bare declaration is sought.

(1) I. L. R., 11 Bom., 119. | (2) I. L. R. 11 Bom., 78.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

of the land and hold that the defendants had no right to keep the same without declaring the bonds to be void, the plaintiffs would hardly care much whether the bonds were cancelled or not; whilst, in order to bring the case under Article 92, schedule 2 of the Limitation Act, there must be a bare declaration asked regarding the cancellation of the bonds. *B. H. followed Sikher Chand v. Dulputty Singh.*⁽¹⁾ Notwithstanding the possible analogy of a recent case in the Privy Council, we must follow the principle laid down in the Calcutta case cited, and rule that the period of limitation is twelve years. (*Vide Note B Under Article 118, 119, p. 364.*)

West, J., observes that notwithstanding the possible analogy of a recent P. C. case he would follow the decision of C. H. (July 1896.)

Where the husband of a female member of a Hindu joint-family had been on the purchase of an estate admitted by the male members as a co-proprietor in respect of a one-fourth share, possession by manager of the whole estate is adverse to such co-proprietor unless shewn to have been authorized. (July 1896.)

(2-t) The Collector of Godavari *v* Addanki Ramanna Pantulu,⁽²⁾ was a suit brought against the defendant, the Collector of the District of Godavari, as agent to the Court of Wards and guardian of Ramalaksmamma, a minor, who was the widow of one Sarvaraya deceased. The plaintiff claimed as a purchaser of the undivided fourth share. He alleged that one Anandaraya, who as the joint proprietor of the mutta had been entitled to a fourth share thereof, and had been in enjoyment of the same, on the 26th of May, 1868, by a registered sale deed, sold his right, title, and interests therein for Rs. 10,000 to Sashayya, who on the 8th of March, 1880, sold the same to him, the plaintiff, for Rs. 5,000. It appeared that the estate of which the plaintiff claimed an undivided fourth share was originally purchased some time about the year 1848, before the birth of Sarvaraya, the deceased husband of Laksmamma, by his father Krishnayya in his own name; that at that time Krishnayya and his two brothers, Pattabhi Ramaya and Adinarayya, constituted a joint Hindu family governed by the Mitakshara Law of inheritance. There was no direct evidence to show what funds

(1) I. L. R., 5 Calc., 363. | (2) 13 L. R., Ind. App., 148.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	

P. C. reversed
the decision of
M. H.

were employed in the purchase of the estate. The absence of possession was carried as far back as the 26th of May, 1868, the date of the sale to Sashayya, a period of twelve years, minus two days, prior to the 24th of May, 1880, the date of the commencement of the suit. One of the issues raised in the suit was, whether the plaintiff or those under whom he claims ever had possession of the property in the suit, and whether the suit was barred by limitation. The only question to be considered is whether during the two days prior to the 26th of May, 1868, Anandaraya had an actual or constructive possession of a one-fourth share, or whether the possession of Sarvaraya was not adverse to him during that period. It was held that where the husband of a female member of a Hindu joint-family had been on the purchase of an estate admitted by the male members as a co-proprietor in respect of a one-fourth share thereof, that possession of the whole estate by the joint-family or its manager was adverse to such co-proprietor in respect of his fourth share unless shewn to have been authorized by him, and consequently that the plaintiff, who claimed title from him, was barred by Limitation Act XV of 1877, schedule 2, Article 144.

145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	PART IX.	
	Thirty years.	

The date of the deposit or pawn.

(a) (No. 147, Act IX; section 1, clause 15, Act XIV.) This Article makes the time to run not from the date when the property is to be returned or the debt is agreed to be paid, but from the date of the deposit or pawn without any reference to the contract or understanding between the parties. In *Radhanath Bose v. Bama Churn Mookerjee*,⁽¹⁾ plaintiff and defendant entered into a contract to the effect that the defendant should purchase a dwelling house benami on account of plaintiff, and reconvey it to plaintiff on his paying up in instalments a certain

This Article applies only to deposits recoverable in specie. Under Act IX of 1871 P (May 1876.)

(1) 25 W. R., 415.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IX. Thirty years.	

sum of money with interest. Plaintiff, seven years after his last payment, sued to recover some payments which he had made in excess of his agreement, and the First Court dismissed the suit as being barred by limitation, but the Second Court decreed the suit on the plea that the plaintiff's payments were deposits, and fell within Article 147 of the Act of 1871. It was held by the High Court that Article 147 applies to deposits recoverable in specie and that the over-payment claimed by plaintiff was barred under Article 60. In *Parbutty Churn v. Ram Narain*,⁽¹⁾ it was held in March, 1870, that suit to recover money deposited with defendants on their agreement to repay the same with interest, was not governed by clause 15, section 1, of Act XIV of 1859, as there was no deposit of property or money intended to be returned specifically.

Collector receiving money to meet uncertain demands on account of revenue is not a depository.

(b) In *Gobind Chunder Sein v. The Collector of Dacca*,⁽²⁾ plaintiff claimed the balance of monies paid over in a certain number of years to meet certain demands on account of Government Revenue. It was held in May, 1869, that the Collector could not be regarded as a "depository" in the sense of clause 15, section 1, Act XIV of 1859.

146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years.	When any part of the principal or interest was last paid on account of the mortgage debt.
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(a) (No. 149, Act IX ; section 6, Act XIV.) This Article provides for the institution of suits against the original

(1) 16 W. R., 164, Note.

(2) 11 W. R., 491.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IX. Thirty years.	

mortgagor, while Article 135, which provides for similar suits in the mofussil, is silent as to against whom the suit under that Article must be brought. Under Act XIV of 1859, the period of limitation was twelve years, under Article 149 of Act IX of 1871 it was 60 years, while under this Act it is 30 years.

(b) As to the special exemption to the special case of mortgage referred to in this Article, which makes limitation run from the time when any part of the principal or interest was last paid on account of the mortgage debt, the Privy Council, in *Brojonath Koondoo Chowdhry v. Khelut Chunder Ghose*,⁽¹⁾ have observed: "It may, however, have been deemed necessary to introduce the exception stated above in order to put mortgages in the English form, when put in suit in the Supreme Court which was generally governed by English Law, upon the same footing as that in which English mortgages are under the existing Statutes of Limitation; and their Lordships, dealing with suits upon mortgages in the ordinary courts of India, might, in the simple case of a mortgagee and his mortgagor permitted to remain in possession so long as he paid interest, have found ground for considering that there was a permissive possession, and that a new cause of action and right of entry accrued when that permission ceased." In *Ram Chunder Ghosaul v. Juggut Monomohiney Dabee*,⁽²⁾ Markby, J., observes: "This would seem as if the clause only applied to transactions where something had been paid for principal or interest; and there be a good reason for this; for where some part of the principal and interest has been paid, there is not likely to be any dispute as to the original transaction, of which the payment operates as an acknowledgment." In the same case, Garth, C. J., observes: "That where there

P. C.
Reason for
introduction of
an express ex-
ception limited
to one special
case of mort-
gage."
(July 1871.)

O. H.
July & August
1878.
Observations of
Markby, J.

Observations of
Garth, C. J.

(1) 14 Moor I. A., 144. | (2) I. L. R., 4 Calc., 283.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IX. Thirty years.	

has been no payment of any part of the mortgage debt or interest, the plaintiff's remedy would be barred at the end of twelve years from the date of demand." "And in cases where any part-payment could be proved, the presumption that would arise from lapse of time (which is the principle upon which all Limitation Acts are founded) would not arise, or at any rate, it would not be nearly so strong as in a case where no part-payment had been made. And this might, in some degree, explain the extraordinary length of time which is allowed to a mortgagee under Article 149 of Act IX of 1871.

Observations of the Bombay High Court as to whether Article 149 or 132 of Act IX of 1871 applied to a suit for foreclosure.

(C) In *Ganpat Pandurang v. Adarji Dadabhai*,⁽¹⁾ plaintiff sued in August, 1874, for foreclosure of an equitable mortgage created in 1862, by deposit of title deeds. The defendants contended that inasmuch as Act IX of 1871 contained no special provision for a suit for foreclosure it must come within six years' limit under Article 118 of that Act. Sargent, J., observes: "It is admitted that the suit was brought within twelve years from the date of the mortgage (15th August, 1862), and, in my opinion, it falls either within Article 132 of the Limitation Act IX of 1871, schedule 2 (which corresponds, in general terms, with section 40 of Statute 3 and 4, Wm. IV, C. 27, which V. C. Shadwell, in *Dearman v. Wyche* (9 Sim. 570) and V. C. Wigram, in *Du Vigier v. Lee* (2 Hare 326; See pp. 334-335) thought applied to suits for foreclosure), or Article 149 of Act IX of 1871, schedule 2 (which provides for a mortgagee recovering the lands mortgaged, using the same language as in section 24 of Statute 3 and 4, Wm. IV, C. 27, which Lord St. Leonards, in *Wrixon, v. Vize* (3 Dr. and W. 104, 120) thought applicable to suits for foreclosure), and if either clause is applicable the suit is not barred. The

(1) I. L. R., 3 Bom., 312.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART IX. Thirty years.	

latter clause, though somewhat unfortunately worded, would appear to be the clause applicable to suits of this nature, as it is not probable that it was intended to make a distinction between suits for foreclosure and redemption, and Article 148 clearly applies to suits for redemption, as appears from the language in the third column."

147.—By a mortgagee for foreclosure or sale.	PART X.	
	Sixty years.	When the money secured by the mortgage becomes due.

(a) This Article is new, and there was no provision similar to it in the Acts of 1859 and 1871. Article 132 was introduced for the first time in the Act of 1871, but in different terms from Article 132 of Act XV of 1877, being "for money charged upon immoveable property." Act XV of 1877 has prefixed the words, "To enforce payment of." Suits brought for the recovery of money secured by mortgage, whether usufructuary, or simple or instrument of hypothecation, as it had been commonly called by all the courts in this country until the introduction of the Transfer of Property Act in 1882, were dealt with under clause 12, section 1, Act XIV of 1859, and Article 132 of Act IX of 1871, which allowed only twelve years. Since the passing of Act XV of 1877, with the special provision contained in Article 147, the difficulty was to reconcile it and Article 132, and give effect to them both. The question was whether a suit by a creditor to realise his debt by the sale of the property hypothecated is entitled to the extended period of 60 years under Article 147. Straight, Offg. C. J., in *Shib Lal v. Ganga Prasad*,⁽¹⁾ observes, "the question is one of serious importance, because, at first sight, it does seem somewhat startling to allow a limitation period of 60 years to a suit by an

This Article is new, and it has created much difficulty and doubt in dealing with the class of suits coming under it.

The doubt is whether a suit to realise money by sale of property hypothecated has twelve years or 60 years. Observations of Straight, C. J., on the above question which he considers to be one of serious importance.

(1) I. L. R., 6 All., 552.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

There is no intelligible reason why the right of one to bring to sale and of the other to pay off the incumbrance should not stand upon the same footing as to limitation. An hypothecation is not different from a simple mortgage.

When Article 147 applies to a plaintiff standing in the position of a mortgagee, why should we go out of our way to hold that it does not cover his case.

C. H. and A. H. held this Article to apply to suits to enforce lien, while B. H. held it to apply to such suits only when the instrument contains power express or implied to sell the property out of court.

C. H.
Suit by auction purchaser of

obligee, under what is popularly spoken of in this court as an hypothecation bond, for enforcement of his lien, by sale of the immoveable property hypothecated. But this, after all, is only matter of first impression, because the legal *status* and responsibilities of the obligor and obligee, arising under one and the same contract, in which the immoveable property is hypothecated, there would seem to be no intelligible reason why, if there really is a mortgage of the land, the right of the one to bring to sale, and of the other to pay off the incumbrance, should not stand upon precisely the same footing as regards the rule of limitation by which its enforcement in court is to be governed. An hypothecation of immoveable property for money borrowed, in the absence of anything to show the contrary, is only in name, but not in its incidents, different from what is known as a simple mortgage. The obligor is nothing more nor less than a mortgagor: the obligee nothing other than a mortgagee. When Article 147 of the Limitation Act speaks of a suit by a mortgagee for sale, why should we go out of our way to hold that it does not cover a case in which the plaintiff in his relation towards the defendant legally, and to all intents and purposes, stands in the position of a mortgagee."

(b) The High Courts of Calcutta and Allahabad have held, that a suit by a simple mortgagee to enforce his lien by sale of the property mortgaged, is governed by Article 147, while the Madras High Court have held otherwise. The Bombay High Court hold this Article to apply to such suits only when mortgage deed gives the creditor, expressly or by implication, power to sell the property out of court. (See *Notes* under Article 132.)

(c) A mortgaged his property to B in 1867, by a simple mortgage (hypothecation.) In 1868, A sold the

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

property to *O* and *D*. In 1870, *B* brought a suit on his mortgage against *A* only and obtained a mortgage decree. In execution of this decree, and on the 14th September, 1871, the mortgagor's interest was sold and purchased by *K*, who, on the 25th January 1872, got formal possession through the court, but never succeeded in getting actual possession. The auction-purchaser's son instituted this suit on the 11th September, 1883. The suit was treated by both the Lower Courts as a suit brought to enforce the lien on the land of the purchasers. The Lower Appellate Court rejected the suit as barred under section 132. It was held that the suit fell within the terms of this Article and was not barred by limitation. Prinsep, J., observes: "The point for our decision in this appeal is simply whether the suit falls under Article 132 or Article 147 of schedule 2 of Limitation Act 1877. The suit has been tried in the courts as a suit by which the purchaser of the rights of the mortgagee endeavours to bring the mortgaged property to sale by enforcing his lien, the mortgage being a simple mortgage. It appears to us that a suit of this description falls within the terms of Article 147, and that the suit was consequently not barred. *Brojo Lal Singh v. Gour Charan Sen.*⁽¹⁾

mortgagee's right and title to enforce lien falls under this Article. (August 1886.)

(d) *Shib Lal v. Ganga Prasad*,⁽²⁾ was a Full Bench case, in which plaintiff sued for money due upon a simple mortgage deed by the sale of the mortgaged property. The question was whether the claim was governed by this Article or by Article 132. It was held that the language of this Article leaves no room for doubt, and that a suit by the holder of a simple mortgage or hypothecation for the enforcement of his lien by sale of mortgaged property is a suit which falls under this clause. The Transfer of Property Act makes the distinction between a

A. H.
Suit by a simple mortgagee to enforce lien by sale falls under this Article. (June 1894.)

(1) I. L. R., 12 Cal., 111. | (2) I. L. R., 6 All., 551.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

mortgage and charge in sections 58 and 100, and Article 132 applies to the enforcement of payment of money charged upon immoveable property. *Vide Notes* under Article 132.

M. H.
Madras High Court held this Article not to apply to a simple mortgagee's suit to enforce lien by sale. (Feb. 1885.)

(e) In *Aliba v. Nanu*,⁽¹⁾ plaintiff sued in 1884, to recover the money due on a simple mortgage deed dated 1870, which provided for repayment in 1871. It was held that the suit did not fall under this Article, but under Article 132. Muttusawmy Ayer, J., observes: Although the words "by a mortgagee for foreclosure or sale" would, under the definition of "mortgagee" given in the Transfer of Property Act, 1882, section 58, include an hypothecatee, it must be remembered that there was no such definition of the term "mortgagee" in 1877, when the present Limitation Act was passed. For some 80 years previous to 1877, an hypothecatee (or simple mortgagee as now defined) had always been regarded as one who had a charge upon immoveable property, and the "mortgagee" who according to the old law could be sued within 60 years of the mortgage was the party in possession. An extended technical definition given to the term "mortgagee" by legislation subsequent to 1877, will not also extend the period during which one who was not technically a mortgagee at the time of the passing of that Act can sue to enforce a claim."

* Mortgagee under old law having been party in possession, an extended technical definition of that term in 1877 will not also extend the period of limitation.

B. H.
Suit to realize debt by sale of property mortgaged by a deed giving power to sell, falls under this Article.

(f) In *Govind Bhaichand v. Kalnak*,⁽²⁾ 1st defendant by a mortgage bond dated 1st January, 1864, mortgaged certain property to plaintiffs' deceased father, with implied power to sell the same if the debt was not satisfied at the expiration of seven years from that date. On the 2nd January, 1883, the 1st plaintiff filed a suit in his own name, as manager of the family, to have the debt realized by the sale of the mortgaged property. The 3rd

(1) I. L. R., 9 Mad., 218. | (2) I. L. R., 10. Bom., 592.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

defendants insisted upon plaintiff's other two brothers being joined as co-plaintiffs, and they were so joined on the 1st March, 1883, at which date both the Lower Courts were of opinion that the suit was barred under Article 132 of the Limitation Act XV of 1877. On appeal by the plaintiffs to the High Court, it was held, reversing the Lower Court's decrees, that plaintiffs' suit was governed by Article 147 of the Limitation Act XV of 1877, and, therefore, not barred. By the instrument sued on, the property in question was mortgaged to the plaintiffs' father with an implied, if not express power to sell the same in the event of the mortgage debt not being paid at the expiration of seven years from the date of the mortgage. The period of limitation was 60 years from the 1st January, 1871. In *Khemji Bhagvandas Gujar v. Rama*,⁽¹⁾ the plaintiff sued to recover Rs. 90, being the amount of principal and interest due on two bonds, (Exhibits 5 and 3), dated the 25th April, 1861, and 8th October, 1866, respectively, and payable, respectively, in ten years and two years from those dates. Both bonds purported to be mortgage bonds. The plaintiff prayed either for foreclosure or for sale of the properties mortgaged and for a decree against the defendants personally. The suit was brought on the 10th August, 1882. The defendants denied the execution of the bonds in dispute, and contended that the suit was barred by the Law of Limitation. Both the Lower Courts found that the bonds were executed by the defendants' father. As to the plea of limitation, they held that personal remedy against the defendants was barred; that as neither bond provided expressly or impliedly for foreclosure and sale, the plaintiff could not claim the 60 years' period of limitation laid down by Article 147, schedule 2 of Act XV of 1877; and that the

Another Bombay case.

Plaintiff sued for foreclosure or sale and for decree personally against defendant.

(1) I. L. R., 10 Bom., 519.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

B. H. held that Article 147 applies to all suits properly brought by a mortgagee for foreclosure or sale while 132 applies to a suit for sale by a creditor having right to realise a charge not amounting to a mortgage.

Observations of Birdwood, J.

plaintiff's claim under the bond of 1866, (Exhibit 3) was barred by Article 132. They awarded the claim under the bond of 1861, (Exhibit 5), and directed the principal and interest due thereon to be realised by the sale of the property hypothecated. It was held that the provision of Article 147 of the Limitation Act (XV of 1877) applies to all suits properly brought by a mortgagee for foreclosure or sale, while the general provision of Article 132 applies to suits for sale by a creditor having a right to realise a charge not amounting to a mortgage. Where immovable property is made by act of parties, security for the payment of a debt, but no power of sale, without the intervention of a court, is given to the creditor, there is no transfer to him of an interest in the property until a decree for sale has been made in his favour, and the transaction does not amount to a mortgage. When immovable property has been so made security for the payment of a debt, there can be no foreclosure by the creditor unless the terms of the contract admit of it. Birdwood, J., observes: " (Exhibit No. 3,) with which we are more immediately concerned, simply recites that the land 'stands security' for the money due under it. The property is also spoken of as mortgaged; but the word must be construed as meaning only that the land has been made security for the payment of the money, so that the creditor has a charge upon the property, within the sense of section 100 of the Transfer of Property Act IV of 1882. He has the right to have his charge realised by sale under a decree; but he is not a mortgagee, as no power is given him, expressly or by implication to sell the property out of court. Until he obtains a decree against the land, no interest in it is transferred to him such as is transferred by a power of sale in an ordinary mortgage. Gopal Pandey v. Purshotam Das.⁽¹⁾ He must, therefore, bring

(1) I. L. R., 5 All., 121.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

his suit for sale within twelve years under Article 132 of the schedule to the Limitation Act, and cannot be allowed the extended period under Article 147. In *Gopal Pandey v. Parshotam Das*, Sir R. Stuart remarks that 'it matters not whether the security may have the name of a simple mortgage or usufructuary mortgage or a conditional sale; 'in all cases, foreclosure may take place if the terms of the contract admit of that remedy.' In the present case, the terms of the contract do not admit of foreclosure, and the remedy by sale through the court is barred.

A. H. observed whether the security has the name of simple mortgage or usufructuary mortgage or conditional sale, foreclosure may take place if the terms of the contract admit the remedy.

(g) The Privy Council held when the Limitation Act of 1859 was in force, that, when by an Act of Law, there has been an alienation from a mortgagor to a third person, the Limitation Law applicable between mortgagor and mortgagee ceases to apply, and the ordinary limitation thenceforward applies. *Anundo Moyee Dossee v. Dhondro Chunder Mookerjee*.⁽¹⁾ In *Manly v. Patterson*,⁽²⁾ the mortgagor, who was first tenant for life under a marriage settlement, was entitled to hold possession of the house mortgaged as long as he pleased, the rent being set off against the income of the trust fund due to him under the settlement. In execution of a money decree against the mortgagor, his right, title, and interest in the premises were purchased by the judgment-creditor, a lady who, at the time of execution and sale, lived in the mortgagor's house. After the purchase, all parties continued to live in the house as before. The mortgagor died on the 14th of August, 1867, and on the 13th of August, 1869, the present suit for sale or foreclosure was instituted by the plaintiff, in whom the legal and beneficial interest in the trust-funds had become vested. It was held that the position of the judgment-creditor under the sale of 1866 was not adverse to the plaintiff, and that, as the tenant for life died within twelve years of the institution of the suit, the claim was not barred.

P. C. held that when by an act of law there has been alienation from mortgagor to a third person limitation applicable between mortgagor and mortgagee ceases to apply.

Case where judgment creditor's possession of a mortgaged house as auction purchaser was held not adverse.

(1) 14 Moore's I. A., 101. | (2) I. L. R., 7 Calc., 394.

Description of suit.	Period of limitation.	Time from which period begins to run.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	PART X. Sixty years.	When the right to redeem or to recover possession accrues. Provided that all

claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burmah, which have been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.

No limitation for redemption suits before Act XIV of 1859.

Act XIV of 1859 prescribed 60 years for suit to recover possession of immoveable property mortgaged from the date of mortgage or from date of acknowledgment.

Act of 1877 refers to suits for redemption and for possession of property mortgaged making time to run from time the right accrues.

C. H.
Right to redeem a share of right to officiate as

(a) (No. 148, Act IX; section 1, clause 15, Act XIV of 1859.) Before Act XIV of 1859, there was no limitation to suits for redemption of mortgages. Act XIV of 1859, section 1, clause 15, prescribed a limitation of 60 years for suits against a mortgagee of immoveable property for the recovery of the same. An acknowledgment "in the meantime" of mortgagor's title or of his right of redemption gave to the plaintiff a fresh starting point. The words "in the meantime" having given room for doubt whether it referred to the prescribed period of limitation, the Legislature in re-enacting the above provisions in Act IX of 1871, distinctly stated that the acknowledgment must have been made "before the expiration of the prescribed period." Act XV of 1877, Article 148, refers to suits for *redemption* as well as to suits to recover possession of immoveable property mortgaged, and makes the period of 60 years to run, not from the date of the mortgage as under the Acts of 1859 and 1871, but from the time "when the right to redeem or to recover possession accrues." As to when this right accrues, see sections 60 and 62 of the Transfer of Property Act. A written acknowledgment of the right of the mortgagor gives a fresh starting point under section 19.

(b) In *Raghoo Pandey v. Kassy Parcy*,⁽¹⁾ plaintiff sought for redemption of a certain share of *brit jugmanka*,

(1) I. L. R., 10 Calc., 73.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

which is a right to officiate as priest at funeral ceremonies of Hindus. The Lower Appellate Court rejected the suit as barred under Article 145. It was held that the right claimed was in the nature of immoveable property according to Hindu Law, and that the suit fell under this Article and not under 145. The texts of the Hindu Law bearing upon this question are collected in *Krishnabhathin Husingange v. Kapabhatbin Mahalbhat*,⁽¹⁾ and *Balvantrav v. Purshotram Sideshvar*.⁽²⁾ In *Futtehsangji Jaswantsangji v. Desai Kalliansangi Hukoomut Raiji*,⁽³⁾ the Judicial Committee of the Privy Council, after referring to the rule of construction adopted by the Bombay High Court in the two cases cited above, observe: "To the application of this rule within proper limits, their Lordships see no objection. The question must, in every case, be whether the subject of the suit is in the nature of immoveable property, or of an interest in immoveable property; and if its nature and quality can be only determined by Hindu Law and usage, the Hindu Law may properly be invoked for that purpose."

(c) In *Ali Muhammad v. Lalta Bakhsh*,⁽⁴⁾ certain immoveable property was mortgaged in June, 1854, for a term which expired in June, 1874, and in July, 1863, the equity of redemption of such property was transferred by sale to the mortgagees by a person who was not competent to make such transfer, and the mortgagees in the suit brought in 1877 set up a proprietary title to such property in virtue of the sale. It was held that the mere assertion of an adverse title would not enable the mortgagee in possession to abbreviate the period of 60 years which the law allows to a mortgagor to prosecute his right to redeem, and that the suit was not barred, though brought after twelve years from the date of deed of sale.

priest at a funeral falls under this Article. (August 1883.)

Right claimed was held to be in the nature of immoveable property.

P. C. observes that, if the question whether the subject of a suit is in the nature of immoveable property can only be determined by Hindu Law and usage, the Hindu law may be invoked for that purpose.

Mortgagees merely asserting adverse title cannot abbreviate 60 years' time. (April 1876.)

Mortgagee set up sale twelve years before suit by a person not competent to do so.

(1) 6 B. H. C. R., A. C., 137.

(2) 9 B. H. C. R., 99.

(3) 1 I. L. R., I. A., 34

(4) I. L. R., 1 All., 656.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

Agreement after the stipulated term for redemption allowing mortgagee to enjoy for a term and then restore property was considered not a mortgage.

(d) In *Gopál Sitárám Gune v. Desái*,⁽¹⁾ plaintiff's ancestor mortgaged his property in 1814, for a term of years. After the expiration of the term in the agreement for redemption, the mortgagor and mortgagee agreed, in 1829, that the mortgagee should hold possession for 28 years and get his money paid with the usufruct, and in the 29th year should hand over the property to the mortgagor. This term expired on the 23rd October, 1857, on which date the plaintiff was entitled to get back the village. The plaintiff filed this suit in September, 1873, for the recovery of the property 16 years after 1857. It was held that the suit was barred. Pinhey, J., observes, that the agreement of 1829 is not a mortgage bond and that there can be no suit for an account, for foreclosure or for redemption on payment of money, and under that document the plaintiff was entitled to assume possession in 1857.

Mortgagor's redemption suit against one who had twelve years' adverse possession and who did not claim under mortgagee held barred.

(e) In *Ammu v. Ramakrishna Sastri*,⁽²⁾ G mortgaged in November, 1829, a garden to J, and gave possession. On J's death, her interest passed to her heirs. The defendant, who was one of the heirs, obtained possession of the three plots in this suit in virtue of a decree passed in 1852. Before 1861, the defendants Samuel and Ammu obtained possession of two of the plots as tenants, and the third plot was with the mortgagee. In 1861, the Deputy Collector, on an enquiry to which the son of the original mortgagor represented by his mother was a party, held in August, 1862, that the three plots belonged to Government, and granted them under three separate puttahs to the defendants Tungu, Samuel and Ammu, and the last two paid no rent to the mortgagee from 1861, but paid assessment to Government. In February, 1862, the plaintiff sued Tungu for redemption and obtained a decree in

(1) I. L. R., 6 Bom., 674. | (2) I. L. R., 2 Mad., 226.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

February 1866, to which neither Samuel nor Ammu nor the Government were parties. The plaintiff filed the present suit in 1876, for redemption against Tungu and her daughter alone. The court made Samuel and Ammu as defendants in May, 1876. The Munsiff decreed the claim against Tungu and Ammu and rejected the claim against Samuel and Ammu as barred by twelve years' adverse possession. The District Judge held that there could be no trespass on the title of the mortgagor so long as he had only an equitable interest. It was held that this Article does not apply to suits against strangers nor to suits which are not suits for redemption, and that this suit was barred under Article 145 of Act IX of 1871 corresponding to Article 144 of the Act of 1877. The court observe that the contention, that so long as the mortgagor is entitled only to the equity of redemption there can be no invasion of his interest, cannot be assented to. There are cases in which the rights and interests of the mortgagor and mortgagee are equally invaded, and in such cases the mortgagor must come into court within the time allowed for the recovery from trespassers of interests in land. Section 116 of the Evidence Act does not debar one who has once been a tenant from contending that the title of his landlord has been lost or that his tenancy has determined. It precludes him only during the continuance of the tenancy from contending that his landlord had no title at the commencement of the tenancy.

(f) In *Periandi v. Angappa*,⁽¹⁾ plaintiff purchased certain property in July, 1880, in execution of a decree subject to a prior mortgage in favor of defendants one to four. The judgment-debtor had previously sued the mortgagees and obtained a decree on a compromise to the effect that the mortgage was redeemable on the owner

This Article does not apply to suits against strangers nor to suits which are not suits for redemption.

There are cases in which the rights and interests of mortgagor and mortgagee are equally invaded when the mortgagor is entitled to the equity of redemption. Mortgagor must come in such cases within the time allowed to recover land from trespassers.

Second suit to redeem allowed when execution of decree obtained for redemption is barred.

(1) I. L. R., 7 Mad., 423.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

paying the money in July, 1877; execution became barred by limitation on the date of the court sale. The plaintiff having purchased judgment-debtor's right, title and interest, the question was, whether the plaintiff might sue again for redemption. It was held that although the decree-holder lost his right to recover the property in execution of the decree, inasmuch as there was no foreclosure, he can still assert his right to redeem.

Suit was brought in 1885 to redeem property mortgaged in 1835 by a registered sale deed accompanied by a registered agreement to redeem within ten years.

In 1840, the property was sold for Government revenue due by mortgagee on other land.

Purchaser took possession in 1847 and sold it to another for the same price he paid first.

(g) Contemporaneously with the execution of a registered deed of sale of zemindari property in 1835, for Rs. 4,000, the vendee executed a deed in favour of the vendors which also was registered, and by which he agreed that if within ten years the vendors should pay Rs. 4,000 in a lump sum without interest, he would accept the same and cancel the sale, and that he should be in possession during that period. This transaction admittedly amounted to a mortgage by conditional sale. The mortgagee remained in possession, and his name was entered as that of proprietor in the Collector's register, in which no allusion was made to a mortgage. In 1840, his rights in this property were sold by auction for arrears of Government revenue due by him on account of other land, and apparently no notice was given by any one at or prior to the sale that it was the mortgagee's interest only which was about to be or was being sold. The property was purchased for Rs. 3,000 by *S*, who took possession, and in 1847 sold it for the same sum to *C*. On the occasion of each transfer, the name of the transferee was entered in the Collector's register as that of proprietor. No application for foreclosure was made at any time. In 1885, the representatives of the mortgagors brought a suit against the representative of *C* for redemption of the mortgage, and for mesne profits. The defendant pleaded; (i) that the suit was barred by

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

limitation under Article 134, schedule 2 of Act XV of 1877; (ii) that the several transferees were innocent purchasers for valuable consideration without notice, who had purchased in each case from the person who was, with the consent, express or implied, of the persons for the time being interested, the ostensible owner, and had in each case, prior to the purchase taken reasonable care to ascertain that the transferor had power to make the transfer, and had acted in good faith. Held, that Article 134 of the Limitation Act did not apply to the case, inasmuch as that Article referred only to persons purchasing what was *de facto*, a mortgage, having reasonable grounds for the belief, and believing that it was an absolute title; and that having regard to section 29 of Regulation XI of 1822, to the presumption that the several transferees knew the law and made inquiries as to the interest they were purchasing, and examined the register in which the deed constituting the transaction of 1835 a mortgage was registered, and also having regard to the fact that Rs. 3,000 only were paid as purchase-money in each case, and to the circumstance that it was doubtful whether a purchaser at a formal auction sale such as that in question could be said to have purchased without notice an absolute interest from the mortgagee, it must be inferred that the transferees knew, or might, or ought to have known, unless they wilfully abstained from inquiry, that the interest which they respectively were purchasing was merely that of a mortgagee. *Bhagwan Sahai v. Bhagwan Din.*⁽¹⁾

(h) In *Nura Bibi v. Jagat Narain*,⁽²⁾ *K* and *J* jointly mortgaged 36 sahamas or shares of an estate to *C*, giving him possession. *C* transferred his rights as mortgagee to *T* and *M*. In execution of a decree for money against *K* held by *M*, *K*'s rights and interests in the mortgaged

Defendant pleaded limitation under Article 134 and that several transferees were innocent purchasers for value without notice.

It was held that Article 134 did not apply as it referred only to persons purchasing what was *de facto*, a mortgage believing that it was absolute title.

Transferees under the circumstances ought to have known unless they wilfully abstained from inquiry that the interest they bought was that of a mortgagee.

Suit by one of two joint-mortgagors to redeem his portion from the other mortgagor who redeemed the entire property falls under this Article.

(1) I. L. R., 9 All., 97. | (2) I. L. R., 8 All., 295.

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART X. Sixty years.	

Neither party was aware of the date of mortgage and neither adduced evidence.

It was held that it is not possible for one of two mortgagors redeeming the whole behind the back of the other to change the position of that other to something less than that of a mortgagor; a co-mortgagor redeeming entire property stands in the shoes of the mortgagee as to the share of the other mortgagor.

property were sold, and were purchased by *P*, whose heirs paid the entire mortgage debt. *R*, an heir of *J*, sued the heirs of *P* to recover from them possession of *J*'s sahams in the mortgaged property, on payment of a proportionate amount of the mortgage money paid by *P*. The plaintiff alleged that the mortgage to *C* had been made 40 years before suit. The defendants contended that a much longer period had expired since the date of the mortgage; that 41 years had elapsed since *C* transferred his rights as mortgagee; that they had redeemed the property 21 years ago and had been since its redemption in proprietary and adverse possession of the sahams in suit, and that the suit was barred by limitation. Neither party was aware of the date of the mortgage and neither adduced any proof on the point. It was held, applying the equitable principle adopted in sections 95 and 100 of the Transfer of Property Act (1V of 1882), that the owner of a portion of a mortgaged estate which has been redeemed by his co-mortgagor, has the right to redeem such portion from his co-mortgagor, and a suit brought for that purpose would be in the nature of a suit for redemption, and would naturally fall within the definition of Article 148, and it was not possible for one of two mortgagors, redeeming the whole mortgaged property behind the back of the other, to change the position of that other to something less than that of a mortgagor, or to abridge the period of limitation within which he ought to come in to redeem. The decision in *Pancham Singh v. Ali Ahmad*,⁽¹⁾ was to the effect that a co-mortgagor who redeems the entire mortgage stands in the shoes of the mortgagee in respect of such portion of the redeemed property as belongs to the other mortgagor.

(1) I. L. R., 4 All., 58.

Description of suit.	Period of limitation.	Time from which period begins to run.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	<p style="text-align: center;">PART X.</p> <p>Sixty years.</p>	When the period of limitation would begin to run under this Act against a like suit by a private person.

(a) (No. 150, Act IX ; section 17, Act XIV.) Bengal Regulation II of 1805, section 1, clause 2, allowed 60 years to suits by, or on behalf of Government for the recovery of Public Revenue, or for any public right or claim whatever. Section 17 of Act XIV of 1859 left the law on the subject unaffected by its provisions by providing : “such suits shall continue to be governed by the laws or rules of limitation now in force.” Act IX of 1871, Article 150, prescribed 60 years’ limitation to suits in the name of the Secretary of State for India in Council. Act XV of 1877 allows the same period of limitation for suits by, or on behalf of the Secretary of State for India in Council.

The Bombay High Court in *Venubai v. The Collector of Nasick*,⁽¹⁾ have held under Act IX of 1871, that as regards the question of limitation, so far as appeals and applications were concerned, the Legislature made no difference between Government and its subject. Act XV of 1877 contains express provision in Article 157 prescribing limitation for the presentation of Criminal Appeals. Though the 3rd Division of the 2nd schedule of the Act relating to applications does not make any express provision as to applications by Government, the Madras High Court in *Appaya v. The Collector*,⁽²⁾ have observed that applications for execution of decrees by or on behalf of Government are governed by the ordinary limitation applicable to private suitors.

B. H. held under Act IX of 1871, that the Legislature made no difference between Government and its subject.

M. H. held that application for execution by Government are governed by ordinary limitation applicable to private suitors.

(b) Certain property in the actual possession of a rebel was confiscated by the Government in 1858. In a

The saving clauses with respect to minors and parties under disability

(1) I. L. R., 7 Bom., 552, *Notes*. | (2) I. L. R., 4 Mad., 155.

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART X.
Sixty years.

to sue contained in Act XIV of 1859, held inapplicable to a suit against Government under Act IX of 1859 for possession of confiscated property.

Saving clauses contained in the general Limitation Act cannot be imported into a special enactment.

Time for suit against Government for confiscated property runs from date of actual attachment.

A list of confiscated houses is not by itself proof of attachment.

suit brought on the 1st May, 1865, to recover the property, it appeared that the plaintiffs were the sons and heirs of one *M* who died in 1854, legally entitled to, though not in possession of, the property in question; that at the date of his death, and at the date of the confiscation, the plaintiffs were minors, and that they came of age in 1861, and February, 1864, respectively. It was held that the suit not having been brought within one year from the date of the confiscation, was barred by section 20, Act IX of 1859. There is no saving clause in Act IX of 1859, with respect to minors or parties under disability to sue, and such saving cannot be held to be implied upon any principle of equitable construction; nor can the saving clauses contained in the general Limitation Act XIV of 1859 be imported into a special enactment. *Mahomed Bahadur Khan v. The Collector of Barielly.*⁽¹⁾

(c) In *Deo Karun v. Nawab Syu Mahomed Ali Shah*,⁽²⁾ it was held that in cases of confiscation, limitation runs not from the date on which confiscation is sanctioned by the Government, but rather from the date on which the property is actually attached on the part of the Government. An order of confiscation or an order sanctioning confiscation is not equivalent to an actual confiscation by way of attachment or seizure. A list of confiscated houses is not by itself proof of actual attachment.

THE SECOND SCHEDULE, SECOND DIVISION—APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days.	The date of the sentence.

(1) 13. B. L. R., 202.

(2) 3. N.-W. P. H. C. R., 328.

Description of appeal.	Period of limitation.	Time from which period begins to run.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay, or the Chief Court of the Punjab* in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.

(a) In *Ramey v. Broughton*,⁽¹⁾ which was a suit on the Original Side of the High Court, decree was signed on the 6th September, 1883, and on the 7th, the defendant's attorney obtaining a copy thereof, served a copy at the office of the plaintiff's attorney on the 8th. The plaintiff, on the 5th September, presented a memorandum of appeal without a copy of the decree to the Registrar, who refused to accept it. Plaintiff applied for a copy on the 12th, obtained it on the 13th, and tendered it with his appeal memorandum on the 15th, which the Registrar refused to accept as being out of time. On the 6th December, 1883, a single Judge admitted the appeal. When it came on for hearing, the court held that the appeal was barred. It was held on review that the plaintiff having allowed five days to expire after the decree was signed before applying for a copy, and not having filed his appeal after so obtaining a copy, at the earliest opportunity possible, such a delay, being entirely unaccounted for, could not be held to be 'time requisite for obtaining a copy of the decree,' and that, therefore, the appeal was out of time.

Delay in a case considered not as "time requisite for obtaining a copy of the decree."

152.—Under the Code of Civil Procedure to the Court of a district Judge.	Thirty days.	The date of the decree or order appealed against.
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(a) In *Venkatarayudu v. Nagadu*,⁽²⁾ it was held that an order made *ex parte* under section 5 of the Indian

District Judge can cancel his original order admitting appeal presented out of time, (July 1886.)

(1) I. L. R., 10 Cal., 652. | (2) I. L. R., 9 Mad., 450.

* The words "or the Chief Court of the Punjab" were inserted after "Bombay" by Act XVII of 1877, sec. 12.

Description of appeal.	Period of limitation.	Time from which period begins to run.
	Thirty days.	

Sub-Judge cannot cancel District Judge's order.

Limitation Act 1877, admitting an appeal after the period prescribed therefor, may be set aside on proper cause being shown by the court which made it. The Calcutta High Court also held so in *Jhotee Sahoo v. Omesh Chunder Sircar*,⁽¹⁾ and further ruled that such an order made by a District Judge cannot be afterwards cancelled by a Subordinate Judge upon the appeal coming on for hearing before him.

A party on whose review application, decree was modified, can treat the order on review as final decree or order and appeal within 30 days from its date.

(b) Any order made upon an application for review of judgment except an order absolutely rejecting an application, becomes if it modifies or alters the original order, the final order in the case, and the party aggrieved by the original decree is entitled, although the modification or alteration was made in his favor, to treat the order upon review of judgment as the final decree or order in the case, and if it was made by a court, an appeal from which lies to the court of a District Judge, he is entitled to prefer his appeal at any time within 30 days from its date. When an application for review of judgment is made upon several grounds, one of which refers only to the question of adjudication of costs, and the court to whom the application is made holds all the grounds to be untenable, but is of opinion that there has been a clerical mistake in that part of its order or judgment which refers to costs, it may reject the application absolutely and permit the applicant to apply under section 206 of the Civil Procedure Code for a rectification of the clerical mistake; but if it does not do so, but, on the application for a review of judgment, amends the clerical mistake in its original order, the decree drawn up in conformity to this order becomes the final decree, and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree. *Joykishen Mookerjee v. Ataoor Rohoman*.⁽²⁾

If the court amends clerical error in its judgment or order as to costs and draws up a decree an appeal will lie within 30 days from that decree.

(1) I. L. R., 5 Cal., 1. | (2) I. L. R., 6 Cal., 22.

Description of appeal.	Period of limitation.	Time from which period begins to run.
	Thirty days.	

(c) In *Huro Chunder Roy v. Surnamoyi*,⁽¹⁾ plaintiff valued his suit at Rs. 18,000, which was reduced to less than Rs. 5,000 by the court of first instance at Rajshahye. A decree dated the 20th December, 1883, was given against the defendant, who applied for copies on the 3rd of February, and the decree was ready on the 7th. The defendant was apparently under the impression that the appeal would lie to the High Court; but on the 16th of March, a letter was despatched by his Calcutta agent informing him that he was mistaken and that the appeal lay to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March. Held, that under the circumstances the court might admit the appeal in the exercise of its discretion under section 5 of the Limitation Act.

Court might admit appeal after time if delay was the result of bona fide mistake of the appellant.

153.—Under the same Code, Section 601,* to a High Court. | Thirty days. | The date of the order refusing the certificate.

This appeal is from an order refusing to certify that a final decree passed by a court other than a High Court is such that it may be appealed to Her Majesty in Council. Section 598, of C. P. C., provides for application for a certificate to the court against whose decree appeal to Her Majesty in Council is sought to be preferred.

154.—Under the Code of Criminal Procedure to any Court other than a High Court. | Thirty days. | The date of the sentence or order appealed against.

(a) This Article is similar to Article 152 of Act IX of 1871. Section 272 of Act X of 1872, which provided for an appeal by the Local Government from a judgment of

(1) I. L. R., 18 Calc., 266.

* 601. If such certificate be refused, the petition shall be dismissed.

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable within 30 days from the date of the order, to the High Court to which the former Court is subordinate.

Bill No. 23 of 1886, proposes to repeal section 599 and the words "within 30 days from the date of the order" in section 601 of C. P. C.

Description of appeal.	Period of limitation.	Time from which period begins to run.
	Thirty days.	

acquittal, declared "the rules of limitation shall not apply" to such appeals. This provision was repealed by Act XI of 1874, section 23, which provided against the presentation of such appeals after six months from the date of the judgment. A Full Bench of the Calcutta High Court held in March, 1877, that 60 days' rule under this Article does not apply to such appeals. *Empress v. Jyadulla*.⁽¹⁾ Article 157 of the Act of 1877 provides for an appeal from a judgment of acquittal within six months.

Time taken in obtaining copy should be excluded. Presenting appeal petition to the officer in charge of jail is sufficient.

(b) Time in obtaining copy of judgment should be excluded in a Criminal Appeal. Time taken in forwarding a prisoner's application for copy and transmitting copy to the officer in charge of the jail was excluded. Presentation of the petition of appeal to the officer in charge of the jail is equivalent to presentation to the court. See *Notes H and J*, under Article 12, p.p. 88-89.

155.—Under the same Code to a High Court except in the cases provided for by No. 150 and No. 157.	Sixty days.	The date of the sentence or order appealed against.
156.—Under the Code of Civil Procedure to a High Court except in the cases provided for by No. 151 and No. 153.	Ninety days.	The date of the decree or order appealed against.

Single Judge's order *ex parte* admitting an appeal after time can be set aside by a Division Court.

(a) In *Dubey Sahai v. Ganeshi Lal*,⁽²⁾ it was held that the order admitting an appeal after time, made *ex parte* by a single Judge of the High Court sitting to receive applications for the admission of appeals under a rule of the court made in pursuance of 24 and 25 Vic., Cap 104, section 13, and Letters Patent of the court, section 27, was liable to be impugned and set aside at the hearing by the Division Court before which it was brought for hearing on the ground that the reasons assigned for admitting it were erroneous or inadequate. This has been

(1) I. L. R., 2 Calc., 436. (2) I. L. R., 1 All., 34.

Description of appeal.	Period of limitation.	Time from which period begins to run.
	Ninety days.	

referred to in *Huasini Begam v. The Collector of Mozaffarnagar*,⁽¹⁾ in which Petheram, C. J., allowed the appellant, whose first application for leave to sue as a pauper was rejected, to file her appeal on full stamp paper. She thereupon, borrowing money on onerous conditions, presented her appeal, which was admitted by a single judge. But a Division Bench rejected the appeal.

(b) In *Aga Mahomed Hamadani v. Cohen*,⁽²⁾ it was held that an appeal from the Court of the Recorder of Rangoon, to the High Court, is an appeal under the Civil Procedure Code, and must be made within the time prescribed by Article 156. In *Mahomed Hossein v. Inodeen*,⁽³⁾ it was held that this Article does not apply to proceedings under section 27 or section 34 of the Burma Courts' Act.

Appeal from decree of the Recorder of Rangoon falls under this Article. (July 1886.)

157.—Under the Code of Criminal Procedure from a judgment of acquittal.	Six months.	The date of the judgment appealed against.
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See *Note A*, under Article 154.

THE SECOND SCHEDULE, THIRD DIVISION—APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure to set aside an award.	Ten days ...	When the award is submitted to the Court.

(a) In *Chhiddu v. Narpat*,⁽⁴⁾ an agreement to refer certain matters to Arbitration was filed in court under section 523 of the Civil Procedure Code and an order of reference was made thereon by the court. It did not provide for difference of opinion between the two arbitrators named therein by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the court, on the application of one of them, appointed an umpire and directed that the award should be submitted on a particular date. An award was made

This Article was held to apply to applications referred to in section 523 of the C. P. C. to set aside an award on any of grounds mentioned in section 521.

(1) I. L. R., 9 All., 11.

(2) I. L. R., 13 Calc., 221.

(3) I. L. R., 10 Calc., 946.

(4) I. L. R., 8 All., 62.

Description of application.	Period of limitation.	Time from which period begins to run.
<p>Defendant not contesting the award on any of any of those grounds is not precluded from appealing though he had not moved the Lower Court to set aside the award.</p> <p>Whether in appeal he can take any of the grounds mentioned in section 521.</p> <p>159.—For leave to appear and defend a suit under Chapter XXXIX of the Code of Civil Procedure.</p> <p>Chapter 39 of the Code of Civil procedure refers to summary procedure on Negotiable Instruments.</p> <p>160.—For an order under Section 629* of the same Code restoring to the file a rejected application for review.</p>	<p>Ten days.</p> <p>Ten days ...</p> <p>Fifteen days.</p>	<p>by the umpire and one arbitrator, without the concurrence of the other arbitrator, and submitted to the court which passed a decree in accordance with its terms. On appeal by the defendant, the District Judge reversed the decree. It was contended that the defendant was precluded from appealing inasmuch as he had not applied to set aside the award within ten days under this Article. It was held that this Article applied to applications referred to in section 522 of the Civil Procedure Code, i. e., applications to set aside an award on any of the grounds mentioned in section 521, and that as the defendant did not contest the award on any of those grounds, he was not precluded from appealing. Petheram, C. J., observes: "Whether or not the defendant would be precluded in appeal from making objections on any of the grounds mentioned in section 521, because he had not applied to set aside the award on those grounds within the time allowed by the Limitation Act for making the application is a question, which we need not determine, as it does not arise here; but there is nothing with reference to the Limitation Act to prevent him from raising the question he now does."</p> <p>When the summons is served.</p> <p>When the application for review is rejected.</p>

* 629. An order of the Court for rejecting the application shall be final; but whenever such application is admitted, the admission may be objected to on the ground that it was—

Description of application.	Period of limitation.	Time from which period begins to run.
161.—For the issue of a notice under section 258* of the same Code, to show cause why the payment or adjustment therein mentioned should not be recorded as certified.†	Twenty days.	When the payment or adjustment is made.

(a) In *Patankar v. Devji*,⁽¹⁾ plaintiff sued for money he paid out of court to the defendant for a money decree he

This Article is observed to render in effect section 208 nugatory.

(2) I. L. R., 6 Rom., 146.

(a) in contravention of the provisions of section 624,

(b) in contravention of the provisions of section 626, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

* 258. If any money payable under a decree is paid out of Court, or the decrees otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in Section 257—A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

† Act XII of 1879.

Description of application.	Period of limitation.	Time from which period begins to run.
<p>Observations of Melville, J. had obtained. Melville, J., while rejecting the suit as one not maintainable under section 244 of Act X of 1877, observes "that the provisions of section 258 is in effect rendered nugatory by the shortness of the period within which this Article requires that such application should be made, and that the class of debtors making such payment consist of persons who are too ignorant of law to know the risk which they run in so doing, and that they receive the first intimation of fraud only when the creditor proceeds to execute the decree without giving credit to the payments then received."</p>	Twenty days.	
<p>162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay (or the Chief Court of the Punjab)* in the exercise of its original jurisdiction.</p>	Twenty days.	The date of the decree or order.
See section 723 of the Civil Procedure Code.		
<p>163.—By a plaintiff for an order to set aside a dismissal by default.</p>	Thirty days.	The date of the dismissal.
See section 103 of the Civil Procedure Code.		
<p>164.—By a defendant for an order to set aside a judgment <i>ex parte</i>.†</p>	Thirty days.	The date of executing any process for enforcing the judgment.
<p>Section 588 allows appeal against order rejecting application to set aside <i>ex parte</i> decree.</p> <p>Section 119 of Act VIII of 1859, corresponds to sections 108 and 109 of Act XIV of 1882, and section 588 of the latter Act provides only for appeals against orders rejecting an application for an order to set aside a decree <i>ex parte</i>. This section implies that the order granting the application is final.</p>		

* The words in brackets were inserted by Act XVII of 1877, section 18.

† Bill No. 23 of 1886, by sec. 28, proposes "An appeal may lie under this sec. (540) from an original decree passed *ex parte*."

Section 31 proposes "An appeal may lie under this section (584) from an appellate decree passed *ex parte*

Description of application.	Period of limitation.	Time from which period begins to run.
	Thirty days,	

(a) In *Sunraj Kauri v. Ambika Prasad*,⁽¹⁾ the District Judge first granted to the appellant in July, 1874, a certificate of guardianship under Act XL of 1858 and on the 15th January, 1883, after giving him notice, passed an *ex parte* order under section 21 of the above Act, that the certificate be cancelled, that a fresh one be granted to the respondent and that appellant do make over to the respondent the minor's property and render him an account of money received and disbursed. A notice of the above order was served on the appellant on the 4th February, 1883, and on the 9th idem, she, by a petition, alleged that she had received no intimation of the application for the cancelment of the certificate. On the 24th of February, the respondent applied for the enforcement of the order under section 22. On the 9th April, 1883, the District Judge fined the appellant Rs. 10, and directed delivery of property within a week. On the 11th April, the appellant applied under section 108 of the Civil Procedure Code for an order to set aside the *ex parte* order of the 15th January, 1883. It was held that the limitation prescribed by this Article began to run from the 4th February, 1883.

To cancel *ex parte* order under section 22 Act XL of 1858 time was held to run from the service of notice of the order to be cancelled.

(b) Notice of an application for execution of a decree being made is not sufficient "process for enforcing" it within the meaning of clause 157, schedule 2, Act IX of 1871. Such process means actual process by attachment, in execution, of the person or property of the debtor. *Poorno Chunder Coondoo v. Prosonno Coomar Sikdar*.⁽²⁾ The date on which property is attached and not the date of the sale in execution, is the date of executing the first process for enforcing an *ex parte* decree. In *Har Prasad v. Jafar Ali*,⁽³⁾ the Allahabad High Court held that an application under section 108 of the Civil Procedure Code of 1877 was barred, as it was not made within 30 days from

C. H. Notice of execution petition is not sufficient "process for enforcing" *ex parte* decree but attachment is. (Dec. 1876.)

A. H. (Jan. 1886.)

(1) I. L. R., 6 All., 144. | (2) I. L. R., 2 Calc., 123.
(3) I. L. R., 7 All., 345.

Description of application.	Period of limitation.	Time from which period begins to run.
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	Thirty days.	
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C. H.
(June 1882.)

the date of executing the process, that is, the attachment in execution of the *ex parte* decree. In *Bhaobunessury v. Judobendra Narain Mullick*,⁽¹⁾ in execution of an *ex parte* decree dated July, 1881, attachment of defendant's property was made on the 9th, 13th and the 18th September, 1881, and the defendant on the 4th January, 1882, moved the court to set aside the *ex parte* decree. The application, though it was made within 30 days of the service of the sale-proclamation, was held barred by this Article as it was made more than 30 days from the date of attachment.

Order granting rehearing of a case decreed *ex parte*, though final, plaintiff in appeal on merits might object to rehearing if granted on application made after time.

(C) In *Runglall Misser v. Tokhun Misser*,⁽²⁾ the plaintiff obtained an *ex parte* decree on the 5th July, 1873, of which he took out execution on the 9th August. On the 11th of November, the defendant applied for and obtained a rehearing under section 119, Act VIII of 1859. On the rehearing, his suit was dismissed by both the Lower Courts on the merits. It was held, on a special appeal to the High Court, that, although section 119 provides that an order for rehearing shall be final, it is final only in the sense that it is not by itself open to appeal, and that the plaintiff was not precluded by that section from raising the objection that the order for rehearing was made after the time limited therein, and therefore ought to be set aside as made without jurisdiction.

165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Thirty days.	The date of the dis-possession.
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(1) I. L. R., 9 Calc., 869.

(2) I. L. R., 2 Calc., 114.

Description of application.	Period of limitation.	Time from which period begins to run.
	Thirty days.	

(a) A person purchased certain property at a sale in execution of a decree in November, 1878; his purchase was confirmed, and he obtained a certificate of sale on the 23rd May, 1879, from which date he remained in possession. The judgment-debtor applied to have the sale set aside for irregularity, but the application was dismissed both at the hearing and on appeal. He had applied before the sale took place to stay the sale on the ground that the right to apply for execution was barred. This application was dismissed, but was allowed on appeal. It did not appear that the auction-purchaser was a party to the proceeding or that he was cognizant of the application. Two years from the date of the sale, and one-and-a-half year from its confirmation, the judgment-debtor on a summary application, obtained an order setting aside the sale and putting the auction-purchaser out of possession. It was held that the order was erroneous, the Subordinate Judge having no power after the sale had been confirmed, to set aside the sale by a summary order, and that under this Article the application for such an order was barred. It was for the execution-debtor to have moved the court to stay confirmation until the disposal of his application. *Mahomed Hossein v. Kokil Singh.*⁽¹⁾

Court has no power to set aside sale by summary order after it had been confirmed though on debtor's appeal it was declared that execution was barred.

Debtor must move court to stay confirmation until disposal of his application.

(b) In *Shootenath Mookerjee v. Obhoy Nund Roy*,⁽²⁾ it was held that symbolical possession such as may be given by the Nazir of a court by sticking a bamboo into the ground, or the like, of a dwelling house or of a share in a dwelling house, of which actual possession might have been granted, is not such a *bond fide* possession as will save limitation; and that a purchaser of immoveable property, sold in execution of a decree, must, under this Article, if obstructed or resisted in endeavouring to obtain possession, apply within 30 days to the court under the directions of which the execution sale was held to be put into actual possession; and if he omits to do so within 30 days from the time when his taking possession was first obstructed or resisted, his only remedy was by a civil suit.

Purchaser if obstructed while endeavouring to get possession, should apply within 30 days for possession.

(1) I. L. R., 7 Cal., 91. | (2) I. L. R., 5 Cal., 331.

Description of application.	Period of limitation.	Time from which period begins to run.
166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, [or on the ground that the decree-holder has purchased without the permission of the Court.]*	Thirty days.	The date of the sale.

This Article applies only to applications made under sections 311 or 294 of C. P. C.

Sections 294 and 311 of the Civil Procedure Code.

This Article applies only to applications made under sections 311 or 294 of the Civil Procedure Code. "Decree holder" is not restricted to decree-holder who has attached, but includes one entitled to ratable distribution under section 295. Where one decree-holder had attached certain land, and another decree-holder against the same debtor had entitled himself to ratable distribution of the assets under section 295 of the Code of Civil Procedure, it was held the latter was entitled to apply, under section 311 of the Code, to set aside the sale on the ground of material irregularity. Advertising that property is subject to mortgage of Rs. 430 instead of Rs. 300, is an irregularity. *Lakshmi v. Kuttunni*.⁽¹⁾

Decree-holder includes one entitled to ratable distribution under section 295.

Failure to give notice under section 248 is an irregularity invalidating subsequent proceeding.

(a) In the matter of the petition of Ramessuri Dass, ⁽²⁾ it was held that where a judgment-debtor has died after decree, but before execution is applied for, the court before directing attachment and sale of any property to proceed, must issue a notice to the party against whom execution is applied for to show cause why the decree should not be executed against him, and that its omission to do so will invalidate the entire subsequent proceedings and that the fact of there being no section in the Code expressly authorising a court to set aside its proceedings is immaterial, as every court has an inherent

Court has inherent power to set aside its irregular proceeding provided that interests of third parties are not affected.

(1) I. L. R., 10 Mad., 57. | (2) I. L. R., 6 Calc., 103.

* The words in brackets were introduced by Act XII of 1879.

Description of application.	Period of limitation.	Time from which period begins to run.
	Thirty days.	

right to see that its process is not abused or does not irregularly issue and may set aside all irregular proceedings as a matter of course, provided that the interests of third parties are not affected. In *Paranjpe v. Kanade*,⁽¹⁾ it was held, that it is always competent to any court to vacate any judgment or order obtained by manifest fraud, and in the case of orders made in execution, section 244 of Act X of 1877 excludes all other remedy. The above ruling was followed in *Sakharam Govind Kale v. Damodar Akharam Gugar*⁽²⁾ in which the decree-holder, on the debtor giving security for the decree amount, had agreed not to execute it, but executed it in breach of the agreement and sold the debtor's real property in 1879. A third party who bought it obtained possession in 1883. The debtor, within 30 days from the purchaser taking possession applied for reversal of the orders on the ground of fraud. The Lower Court held the application barred by this Article and referred the debtor to a suit. It was held that this Article did not apply to the case; that a separate suit would not lie, and that the relief sought by the debtor could only be obtained, at all events as against the decree-holder, by an application under section 244 of the Civil Procedure Code.

Any court is competent to vacate any judgment or order obtained by manifest fraud in cases of orders in execution; sec. 244 excludes all other remedy.

167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Thirty days.	The date of the resistance, obstruction or dispossession.
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(See sections 328, 334 and 335 of Civil Procedure Code and Notes to Article 164.) The first portion of Article

(1) I. L. R., 6 Bom., 148. | (2) I. L. R., 9 Bom., 468.

Description of application.	Period of limitation.	Time from which period begins to run.
	Thirty days.	

167 refers to applications by the decree-holder or the execution purchaser.

Making application under this Article is discretionary.

(a) Section 328 of the Civil Procedure Code, which was passed after Act XV of 1877 came into operation, enacts that the decree-holder may, in case of obstruction, complain to the court at any time within one month. Section 334 extends the provisions of section 328 to cases where the judgment-debtor obstructs the execution purchaser in obtaining possession of immoveable property.

Section 328 does not prevent a suit by plaintiff who does not avail himself of its provisions.

(b) In *Balvant Santaram v. Babaji*,⁽¹⁾ it was held in July, 1884, that section 328 of the Civil Procedure Code (XIV of 1882) does not make it obligatory on a decree holder, who is obstructed in execution of the decree, to pursue his remedies under that section. Accordingly the failure on the part of the plaintiff to avail himself of the remedy under that section did not prevent him from proceeding against the defendant by a regular suit. In *Shoteenath Mookerjee v. Obhoynund Roy*,⁽²⁾ it was held that if the purchaser omits to apply within 30 days from the time when his taking possession was first obstructed or resisted, his only remedy is by a Civil Suit.

Decree holder's failure to complain of first obstruction does not bar his complaint of second obstruction in time.

(c) Where a warrant for possession of land in execution of a decree was not executed owing to the judgment debtor's resistance in September, 1880, and no complaint was made under section 328, but a fresh warrant taken and resistance was again made in January, 1881, it was held that the decree-holder's complaint as to the second obstruction made within 30 days was not barred. *Rama Sekara v. Dharma Raya*.⁽³⁾

168.—For re-admission of an appeal dismissed for want of prosecution.	Thirty days.	The date of the dismissal.
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(See section 558 of the Civil Procedure Code.) Time runs from the date of dismissal irrespective of any consideration other than one of those which come within some of the exceptions applicable to the case.

(1) I. L. R., 8 Bom., 602. | (2) I. L. R., 5 Calc., 331.

(3) I. L. R., 5 Mad., 113.

Description of application.	Period of limitation.	Time from which period begins to run.
169.—For a re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent.	Thirty days.	The date of the decree in appeal.
See section 560 of the Civil Procedure Code.		
170.—For leave to appeal as a pauper.	Thirty days.	The date of the decree appealed against.
(See section 592 of the Civil Procedure Code.) The time for applying for leave to appeal as a pauper is 30 days, even if the application has to be made to the High Court. Under Article 162 of Act IX of 1871, the period allowed was 90 days, whether the application was made to the District Court or to the High Court.		
*171.—Under Section 363† or 365 of the Code of Civil Procedure, by a person claiming to be the legal representative of a deceased plaintiff or appellant.†	Sixty days...	The date of the plaintiff's or appellant's death.

(a) The Civil Procedure Code, sections 363, 365, and the Limitation Act, schedule 2, Article 171, do not apply to the case of a plaintiff dying after decree. If a plaintiff dies after decree, his representatives are not bound to

This Article and sections 363 and 365 do not apply to a plaintiff dying after decree.

* Bill No. 23 of 1886, by section 37, proposes to repeal Articles 171, 171-A. and 171-B., and substitute for the words "of the same Code" in Article 171-C. the words or figures "or section 562 of the Code of Civil Procedure." The Bill also proposes amendments of Chapter XXI of the Code and substitution of new sections for sections 363 and 365.

† 363. If there be more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

365. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

† Act XII of 1879.

Description of application.	Period of limitation.	Time from which period begins to run.
	Sixty days.	

apply within 60 days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. *Ramanada Sastri v. Minatchi Ammal*.⁽¹⁾

They do not apply to execution proceedings.

(b) In *Dulari v. Mohan Singh*,⁽²⁾ it has been observed, that the provisions of sections 365 and 366 cannot be adapted to execution proceedings, and that an application by the legal representative of a deceased decree-holder to continue execution proceedings is not governed by this Article. In *Gulabdas v. Lakshman Narhar*,⁽³⁾ it has been held by the Bombay High Court, that the Code of Civil Procedure not providing that applications for execution shall like suits abate by the death of the judgment-creditor, such a representative may come in at any time, as his coming in is contemplated in Article 179, explanation 1, subject always to the same conditions as would apply to his principal.

171-A.—Under Section 366* | Sixty days... | The sixtieth day from
of the same Code, by | | the date of the
the defendant.† | | plaintiff's death.

(1) I. L. R. 3 Mad., 238.

(2) I. L. R. 3 All., 759.

(3) I. L. R. 3 Bom., 221.

* 366. If within the time limited by law no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

† Act VIII of 1880.

Description of application.	Period of limitation.	Time from which period begins to run.
171-B.—Under Section 368* of the same Code, to have the representative of a deceased defendant made a defendant.†	Sixty days...	The date of the defendant's death.

(a) The Limitation Act of 1877 was passed in close connection with the Civil Procedure Code of that year. In the Civil Procedure Code, the first para. of section 582 terminated at the words "Chapter V." In the Limitation Act, Article 171 spoke of a deceased plaintiff only, and not of a plaintiff or appellant. The words "or appellant" were introduced into Article 171 by Act XII of 1879, which added the supplementary Articles 171-A, 171-B and 171-C. The same Amendment Act also modified section 582 of the Code by adding, after the words, Chapter V, and in sections 363 and 365, the word "plaintiff shall be held to include an appellant." Hutchins; *Observations of Hutchins, J.* M. H. held this Article not to apply to deceased respondents.

J., in *Lakshmi v. Sri Devi*,⁽¹⁾ observes: "This seems to

(1) I. L. R., 9 Mad., 1.

* 368. If there be more defendants than one, and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone,

and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

† Act VIII of 1880.

Description of application.	Period of limitation.	Time from which period begins to run.
	Sixty days.	

The Legislature have not made a change in the Law of Limitation as they intended, and plaintiff is entitled to avail himself of the oversight.

Appellant's application to make a deceased respondent's representative party to appeal, does not fall under this Article.
(Feb. 1885.)

negative a possible suggestion that the words "or appellant" were added to Article 171 out of excessive caution. Very slight caution would have shown that, if it was still doubtful after the amendment of section 582 whether a plaintiff included an appellant in regard to limitation in Article 171, a defendant could not possibly include a respondent in Articles 171-A, B and C, since the section 582 had not been amended with regard to defendants. Under the law, as it stood after the Amendment Act, there could, I think, be no doubt that Article 171-B, did not apply to deceased respondents. Then, in 1882, there was a further amendment of section 582, and it now stands as set out in the beginning of this judgment. It is possible that the Legislature intended to make a corresponding change in the limitation, but they have not done so, and an appellant is, in my opinion, entitled to take advantage of the oversight."

(C) Article 171-B relates to applications made under section 368 of the C. P. C., which provides for the plaintiff bringing in the representatives of a deceased defendant. Although section 582 provided that "the words 'plaintiff,' 'defendant,' and 'suit' occurring in Chapter XXI of the C. P. C., shall be held to include an appellant, a respondent, and an appeal respectively," inasmuch as this Article made no reference to the death of a respondent, the Allahabad High Court, in *Narain Das v. Lajja Ram*,⁽¹⁾ observed that this rule, that a suit or appeal should, in certain circumstances abate, was confined to cases in which a plaintiff or an appellant or a defendant had died, and held in February, 1885, that it is not obligatory on the appellant to make an application to the court, praying that the legal representatives of the deceased *respondent* be made parties to the appeal, and that where there has been no such application made within the period prescribed by

(1) I. L. R., 7 All., p. 693.

Description of application.	Period of limitation.	Time from which period begins to run.
	Sixty days.	

this Article, the appeal does not abate. This ruling implies that such applications are governed by Article 178. Petheram, C. J., observes : " All the provisions of Chapter XXI relate to the addition of parties by the plaintiff who would have the means of knowing who were the proper persons to add, and who is bound in the interests of justice to make the additions. But none of these reasons relate to the case of a defendant-appellant (in this case, the defendant is the appellant) who did not set the litigation on foot, and is only interested in getting rid of the decree against him." It must be borne in mind that section 366, para. 2, provides for the case of a defendant also being anxious to obtain an adjudication upon the subject matter of the suit by bringing in the heirs of the deceased plaintiff ; such procedure will be absolutely necessary in all suits for partition. In *Lakshmi v. Sri Devi*,⁽¹⁾ which is a full Bench case, it was held that an application by an appellant to make the representative of a deceased respondent party to the appeal does not fall under Article 171-B, but under Article 178 of schedule 2 of the Indian Limitation Act 1871.

Observations of
Petheram, C. J.

M. H. held an application by an appellant to make deceased respondent's representative party to appeal, falls under Article 178.

(d) In *Soshi Bhusan Chand v. Grish Chunder*,⁽²⁾ appeal was filed on the 19th November, 1883, and on the 14th March, after service of notice, the respondent died. On the 6th January, 1885, the appellant named a person to be substituted as a respondent. On the 27th January, 1885, the court directed the appellant to justify the delay, and he affirmed that he had first heard of the respondent's death at the end of November or the beginning of December, 1884. The court, allowing the substitution asked for to be made subject to any objection that might be made thereto at the hearing of the appeal observe—" looking at the express provisions of section 3 of the present Code, we think that the term " Code" in

C. H. held the word " defendant" includes a respondent. (Jan. 1885.)

The court observed that the term " Code" in Article 171-B must apply to Act XIV of 1882.

(1) I. L. R., 9 Mad., 1. | (2) I. L. R., 11 Cal., 694.

Description of application.	Period of limitation.	Time from which period begins to run.
	Sixty days.	

Article 171-B, schedule 2 of the Limitation Act, must apply to the present Code (Act XIV of 1882), and this being so, section 368 must be read with section 582, and the word “defendant” in section 368 must be held to include a respondent.”

C. H. since held that the word “defendant” did not include a respondent. (March 1886.)

(e) In *Udit Narain Singh v. Harogouri Prosad*,⁽¹⁾ it was held that the word “defendant” in Article 171-B of the Limitation Act does not include a respondent, and that section 582 of Act XIV of 1882 affects only proceedings under the Code, and does not extend the operation of any portion of the Limitation Act. The above decision was followed by the Bombay High Court in June, 1886, in *Balkrishna Gopal v. Bal Joshi Sadashive Joshi*.⁽²⁾ The Allahabad High Court in *Baldeo v. Bismillah Begum*,⁽³⁾ held in November, 1886, that Article 171-B applies to applications to have the representative of a deceased *defendant-respondent* made a respondent. Oldfield, J., observes that Article 171-B “refers to applications under section 368 of the Civil Procedure Code, to have the representative of a deceased defendant made a defendant, and the time runs from the date of death. In the case before us, the respondent who died is the defendant, and I think the Article referred to applies in his capacity of defendant.”

B. H. also held so. (June 1886.)

A. H. held that this Article applies to have the representative of a deceased *defendant* made a respondent. (Nov. 1886.)

(f) In *Rameshar Singh v. Bisheswar Singh*,⁽⁴⁾ which was an appeal by the judgment-debtor against an order refusing his application for a declaration of insolvency under section 344 of the Civil Procedure Code, the decree-holder, who was respondent, died, and the judgment-debtor (appellant) took no steps to have the legal representative of the deceased substituted as respondent in his place within the prescribed time. It was held that this Article applied and that the appeal must abate.

A. H. held this Article to apply to judgment-debtor's appeal against order refusing to declare him an insolvent. (March 1886.)

(1) I. L. R., 12 Cal., 590.

(2) I. L. R., 10 Bom., 663.

(3) I. L. R., 9 All., 118.

(4) I. L. R., 7 All., 734.

Description of application.	Period of limitation.	Time from which period begins to run.
	Sixty days.	

(g) In *Janárdan Vithal v. Anant Máhadev*,⁽¹⁾ the plaintiff applied for leave on the 13th February, 1880, to sue in *formd pauperis*. In March, 1880, one of the defendants died and his widow was brought in by plaintiff as heir on the 3rd July, 1880. This application was granted the same day, but the application to sue as a pauper was not granted till 20th November, 1880. Defendants contended that as the widow was brought on the record more than 60 days after the death of her husband, the suit was barred. It was held that neither this Article of the Limitation Act nor any other provision of law applied to an enquiry into a claim to sue in *formd pauperis*, and that the plaintiff, before his application was granted under section 410, was not bound to apply within any particular time for the substitution of the name of the heir of the deceased defendant.

B. H.
This clause does not apply to application to sue in *formd pauperis*.
(August 1883.)

(h) In *Kedarnath Dutt v. Harra Chand Dutt*,⁽²⁾ under a decree for partition, dated February, 1870, the usual commission for partition was issued. The Commissioners, in their return to the commission, dated December, 1871, having differed in opinion, the court, in March, 1872, quashed the return and ordered a fresh commission. No further steps were taken. In December, 1880, defendant died intestate leaving five sons. The plaintiff applied after 60 days from the death of the defendant for an order to revive the suit by entering the names of the sons as heirs. The heirs opposed the application as barred by the Act of Limitations. It was held by Wilson, J., that the application being one in a pending suit, the right to apply accrued from day to day and therefore it was not barred by lapse of time.

C. H.
Held that the periods of limitation in clauses 171, 171-A, and 178 do not affect the right to apply in a pending suit, i.e., a suit in which no final order has been made.
Defendant died leaving five sons after decree for partition and commission was issued for partition.
(March 1882.)

(i) *Gocool Chunder Gossamee v. Administrator-General of Bengal*,⁽³⁾ was a suit instituted by the trustee

Application in a case where both the plaintiff and defendant died after a decree was

(1) I. L. R., 7 Bom., 373. | (2) I. L. R., 8 Calc., 420.
(3) I. L. R., 5 Calc., 726.

Description of application.	Period of limitation.	Time from which period begins to run.
	Sixty days.	

made and directions were given for having a scheme settled to have the trusts of a will carried out. Case was struck off the board for want of prosecution.

appointed under a will, against the executrix, for the purpose of having the trusts of the will carried into execution. A decree was made and certain directions were given for the purpose of having a scheme settled, by which the trusts were to be carried out; but before the scheme was finally settled and approved, and while the proceedings were pending, the case was struck out of the board for want of prosecution. Subsequently both the plaintiff and defendant died. The heirs of the plaintiff then instituted a suit against the Administrator-General as representing the estate of the defendant for carrying the trusts into execution and prayed that their suit might be considered as supplemental to the original one. It was held, that the original suit, though no longer upon the board, was capable of revival, and that if no person were living whose consent might be obtained, or to whom notice might be given, the court might give leave without any such consent or notice, and that the proper course to pursue was to allow the plaintiff to amend their plaint by putting it in the form of a petition under section 372 of the Civil Procedure Code, the defendant being at liberty to put in any answer which he might have done if the proceeding had been by petition in the first instance; and that the words "pending the suit" in section 372 of the Civil Procedure Code relate to a suit in which no final order has been made.

The words "Pending the suit" in sec. 372 of the C. P. C. relate to a suit in which no final order has been made.

Application to bring in the representative of a deceased sole defendant was held to be governed by Article 178.

(j) In *Benode Mohini Chowdhraïn v. Sharat Chunder Dey Chowdhry*,⁽¹⁾ which was a suit to recover land against a sole defendant, the latter died before the hearing; 63 days after the death of the defendant, the plaintiff applied to the court to enter on the record the legal representative of the deceased defendant. On the 22nd of November, 1880, the court rejected the application as barred under this Article and ordered the suit to abate. On

(1) I. L. R., 8 Calc., 837.

Description of application.	Period of limitation.	Time from which period begins to run.
	Sixty days.	

the same day, the plaintiff applied to the court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of September, 1881. The High Court declaring that no appeal lay against the order of the 20th September 1881, and rejecting the appeal against the order of the 22nd November, 1880, as put in out of time, took cognizance of the case under section 622 of the Civil Procedure Code, and held that the application which was rejected on the 22nd of November, 1880, was an application under section 372, and not under section 368 of the Code of Civil Procedure, and that the applicant was entitled to make the application within three years as allowed by Article 178.

(k) In *Gulabdas v. Lakshman Narhar*,⁽¹⁾ it was held that this Article does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution proceedings commenced by him. The Civil Procedure Code does not provide that application for execution shall, like suits, abate by the death of the judgment-creditor. Such a representative may therefore come in at any time, as his coming in is contemplated in Article 179, explanation I, subject always to the same conditions as would apply to his principal.

This clause does not apply to execution proceedings.

171-C.—Under Section 371* of the same Code for an order to set aside an order for abatement or dismissal.†	Sixty days...	The date of the order for abatement or dismissal.
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(1) I. L. R., 3 Bom., 221.

* 371. When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

But the person claiming to be the legal representative of the deceased, or bankrupt, or insolvent, plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

† Act VIII of 1880.

Description of application.	Period of limitation.	Time from which period begins to run.
172.—By a purchaser at an execution-sale, to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Sixty days...	The date of the sale.

Application for the refund of purchase money on the ground that debtor had no saleable property is not affected by this Article.
(Nov. 1884.)

(a) In *Sivarama v. Rama*,⁽¹⁾ the decree-holder who purchased the property in auction on the 28th November, 1882, applied in April, 1884, for a refund of the purchase money on the ground that the judgment-debtors had no saleable property therein and also for an order entitling him to recover the money under the decree. The Lower Court held that the application under section 313 of the Civil Procedure Code to set aside the sale was barred by this Article and that the application under section 315 of the Civil Procedure Code was inapplicable inasmuch as the sale has not been set aside under section 312 or 313, or found by a court that the petitioner has been deprived of the property. The High Court held, that under section 313 of the C. P. C., a purchaser at a sale in execution of a decree may resist the confirmation of the sale and prevent its conclusion, while under section 315 he may apply, after the confirmation of the sale, for refund of the purchase money on the ground that nothing passed by the sale; and that to entitle a purchaser under para. 2 of section 315 of the Civil Procedure Code, to a refund of purchase money, it is not necessary that a court should have decided in other proceedings that the judgment-debtor had no saleable interest in the property which purported to be sold, or that the purchaser should have obtained actual possession and have been deprived thereof.

To entitle a purchaser to such refund, it is not necessary that a court should have decided in other proceedings that debtor had no saleable interest.

This Article applies even if the sale had been confirmed before 60 days.

(b) "Section 312 requires the court to confirm the sale, 'if no such application as is mentioned in the last pre-

(1) I. L. R., 8 Mad., 99.

Description of application.	Period of limitation.	Time from which period begins to run.
	Sixty days.	

ceding section be made.' Section 313 allows a purchaser to apply to set aside the sale on the ground that the judgment-debtor had no saleable interest therein, and Article 172 of the Limitation Act allows 60 days for such applications, but there was no provision that the court shall wait for 60 days to see if any such application may be filed. We do not think that the 149th form, as it stood under the Act 1877, can be construed to render inoperative, or postpone the effect of a sale, confirmation of which was made after 30, but before 60 days has elapsed." *Haji v. Atharaman*.⁽¹⁾

173.—For a review of judgment, except in the cases provided for by No. 162.	Ninety days.	The date of the decree or order.
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(a) Section 21, Act XI of 1865, is still in force notwithstanding the right of review which is given to Small Cause Courts in the Mofussil by section 623 of the Civil Procedure Code. *Ratan Krishen Poddar v. Raghoonath Shaha*.⁽²⁾ Where the circumstances of a case admit of a new trial, an application for such new trial is governed by section 21 of Act XI of 1865; but where the circumstances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by this Article. If a new trial is necessary, then the plaintiff against whom a judgment may have been passed will be out of time if he fail to give 7 days' notice. *Madon Mohun Poddar v. Purno Chundr Purbot*.⁽³⁾

Section 21 of Act XI of 1865 is in force notwithstanding section 623 of the C. P. O.

(b) An application to amend a decree, which is found to be at variance with the judgment in accordance with the provisions of section 206 of the Civil Procedure Code, is an application of the kind mentioned in No. 178 of schedule

Application to amend a decree which is at variance with judgment under section 206 of the C. P. O. of 1877, does not fall under this Article.

(1) I. L. R., 7 Mad., 512. | (2) I. L. R., 8 Cal., 287.

(3) I. L. R., 10 Cal., 297.

Description of application.	Period of limitation.	Time from which period begins to run.
	Ninety days.	

2 of Act XV of 1877, and as such subject to the limitation of three years. *Gaya Prasad v. Sikri Prasad*.⁽¹⁾ In *Joy Kishen Mookerjee v. Ataoor Rohoman*,⁽²⁾ the Subordinate Judge, upon an application for a review of judgment on several grounds, of which claim for costs was one, rejected all the other grounds and allowed proportionate costs on the last ground in the petition. White, J., observes, that the Subordinate Judge might have dismissed the petition and directed the petitioner to move the court under section 206; but as he chose to make the amendment under the review sections of the Code, the petitioner was entitled to treat the order as made upon review of judgment.

174.—By a creditor of an insolvent judgment-debtor, under Section 353* of the Code of Civil Procedure.	Ninety days.	The date of the publication of the schedule.
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This Article applies to applications made under section 353 of the C. P. C. after schedule was framed

(a) This Article governs applications made under section 353 subsequent to the framing of the schedule. Application made under section 352 or before the framing of the schedule, and which is in the nature of a tender of proof of debt, is held to be governed by Article 178. *Pershadi Lal v. Chunni Lal*.⁽³⁾

(1) I. L. R., 4 All., 23. | (2) I. L. R., 6 Calc., 22.

(3) I. L. R., 6 All., 143.

* 353 Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

Description of application.	Period of limitation.	Time from which period begins to run.
175.—For payment of the amount of a decree by instalments.	Six months..	The date of the decree.

(a) Under section 210 of the Code, after the passing of a decree for the payment of money, the court may, on the application of the judgment-debtor, and with the consent of the decree-holder, order that the amount decreed be paid by instalments.

176.—Under the Code of Civil Procedure, Section 516* or 525, that an award be filed in Court.	Six months..	The date of the award.
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(a) In *Sreenath Chatterjee v. Kylash Chunder Chatterjee*,⁽¹⁾ Couch, C. J., was of opinion that “the word “date” does not mean the day written in the award, as when it was made, but the time when it is given to the parties, when it becomes an award and is handed over to them so that they may be able to give effect to it.” The above opinion was followed in *Dutto Singh v. Dosad Bahadur Singh*.⁽²⁾

“Date” does not mean the date that the award was written, but the date that it is given to parties.

(b) The act of an arbitrator in handing in an award to the proper officer of the court for the purpose of the award being filed, cannot be considered as an “application” within the meaning of the Limitation Act. *Robarts v. Harrison*.⁽³⁾

Arbitrator handing in an award to court is not an application.

(1) 21. W. R., 248.

(2) I. L. R., 9 Calc., 575.

(3) I. L. R., 7 Calc., 333.

* 516. When an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Description of application.	Period of limitation.	Time from which period begins to run.
177.—For the admission of an appeal to Her Majesty in Council.	Six months...	The date of the decree appealed against.

Bill No. 23 of 1886 proposes to repeal section 599 which was unintentionally reproduced in the C. P. C. of 1882.

(a) An application under sections 598 and 599 of the C. P. C. falls within this Article. The limitation for such an application was provided by the section 599 of Act X of 1877 until that section was repealed by the Limitation Act of 1877. The period of limitation, however, remains the same. But section 599 has been reproduced in the C. P. C. of 1882.

(b) Bill No. 23 of 1886, by section 33, proposes to repeal section 599 of the C. P. C. of 1882. It has been observed that section 599 and the portion of section 601 now proposed to repeal, were repealed by Act XV of 1877, but were unintentionally reproduced in the Code of 1882.

178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, Section 230.*	Three years.	When the right to apply accrues.
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This Article does not apply to applications for sale certificates.

(a) *In re Khaja Patthanji*,⁽¹⁾ auction sale of immoveable property took place on the 17th February, 1876, and the sale was confirmed on the 20th March, 1876. The purchaser, Khaja, applied for a certificate after 10th March, 1880. The question was whether his application was barred by this Article. A Division Bench (Westropp, C. J. and Melville, J.,) held in September, 1880, that the application was barred by this Article, as they were of opinion that the purchaser's right to a certificate accrued to him, under Act VIII of 1859, when the sale was confirmed, and under section 316 of Act X of 1877, the certificate was required to bear the date of the confirmation. The above decision was followed in *Tukaram v. Satvaji Khanduji*,⁽²⁾ in which application for certificate

(1) I. L. K., 5 Bom., 202. | (2) I. L. R., 5 Bom., 206.

* See section 230 under Article 179.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

was made five years and-a-half after the confirmation of the sale. When the same question arose in *Vithal Janardan v. Vithojirav Putlájiráv*,⁽¹⁾ a Division Bench (Sargent, C. J. and Melville, J.) dissenting from the above ruling, held in July, 1882, following the decision of the Madras High Court in *Kylasa Goundan v. Ramasawmi Ayyan*,⁽²⁾ that the provisions of the Limitation Act do not apply to applications to a court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character, and that this clause is not applicable to applications for certificates of sale.

Limitation Act does not apply to applications to do what a court has no discretion to refuse, or for the exercise of functions of a ministerial character.

(b) In *Ishwardas Jagjivandas v. Dosibai*,⁽³⁾ the same court which filed an award on the 20th November, 1866, passed no judgment in terms of it. Several applications for the execution of the award were subsequently made and granted. The last one, made in 1880, was rejected on the ground that there was no decree, and the High Court confirmed the order. The applicant then applied to the same court for adjudgment on the award; but the application was rejected as barred by this Article. It was held that the court was bound to pass the judgment without waiting for any application for it, and that though such application was, as a matter of practice, usual, such an application was one which was not within the contemplation of the Limitation Act.

Application for decree as per award filed is not contemplated by the Limitation Act.

(c) In *Bai Manekbai v. Manekji Kavasji*,⁽⁴⁾ the appellant applied in April, 1879, for Letters of Administration to the estate of one Kharsetji who died in May, 1867. The District Judge rejected it as barred under this Article. It was held that applications for probate or letters or certificates of administration do not fall within this Article inasmuch as the Article is limited to applications made under the Code of Civil Procedure. It is

This Article does not apply to applications for Probate or Letters of Administration.

(1) I. L. R., 6 Bom., 586.

(2) I. L. R., 4 Mad., 172.

(3) I. L. R., 7 Bom., 316.

(4) I. L. R., 7 Bom., 214.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

observed, that the preamble of the Act purports to deal with "certain applications" only and not with all applications. The Madras High Court followed the above decision and in the matter of the petition of Ishan Chunder Roy,⁽¹⁾ so far as to hold that this Article does not apply to applications for certificates to collect debts.

Observations of
Turner, C. J.

Turner, C. J., observes: "If we were to hold that this Article applies to all applications for which no period of limitation is provided, it would lead to most inconvenient results. Such a limitation could not have been intended to apply to an application for probate, an application under the Religious Endowments' Act, an application for the appointment of new trustees, &c." *Janaki v. Kesavalu*.⁽²⁾

Collector's ap-
plication to
cancel court
sale illegal
under Bhagdari
Act V of 1862 is
not governed
by limitation.

(d) In the *Collector of Broach v. Desai Raghunath*,⁽³⁾ the Collector applied on the 21st January, 1881, to set aside court sale made in September, 1874, of an unrecognized portion of a bhag, as illegal under section 1 of Bombay Act V of 1862. The Lower Appellate Court rejected the application on the ground that a judicial sale cannot be set aside in a summary way. It was held that the Law of Limitation did not apply to proceedings taken by a Collector under Bombay Act V of 1862. The court observe, that inasmuch as section 1 distinctly provides against attachment and sale of a portion of a bhag, it is a fraud upon the Act, and the Collector cannot act until he knows that the Act has been infringed, and that if the time ran against the Collector, who might be kept in ignorance of sale by collusion of parties, the Act would practically be ineffectual.

Application by
auction-pur-
chaser for pos-
session should
be made with-
in three years
from the grant
of certificate.

(e) *Basapa v. Marya*,⁽⁴⁾ was a Full Bench case in which a decree-holder who had obtained a money decree had himself become the auction-purchaser of the defendant's property on the 9th September, 1874, and the sale.

(1) I. L. R., 6 Calc., 707.

(2) I. L. R., 8 Mad., 207.

(3) I. L. R., 7 Bom., 546.

(4) I. L. R., 3 Bom., 433.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

was confirmed on the 9th October, 1878; but the certificate of sale was not issued till the 23rd January, 1878. On the 2nd April, 1879, the purchaser applied for possession. It was held that the right to apply for possession contemplated in sections 318 & 319 of Act X of 1877, accrued on the date that the certificate was issued and not on that on which the sale was confirmed, and that therefore the applicant had three years' time mentioned in this Article from the date of the certificate. Following the above decision, a Division Bench (Sargent, C. J., and Kemball, J.) held in January, 1884, in *Hanmantrav Pandurang Joglekar v. Subaji Girmaji*,⁽¹⁾ in which auction-purchaser applied for possession on the 7th November, 1883, while the sale certificate was dated 17th March, 1880, that the applicant was barred, the application having been made after three years from the grant of the certificate.

B. H.
(Jan. 1884.)

(f) In *Parshadi Lal v. Chunni Lal*,⁽²⁾ the respondent applied on the 22nd April, 1878, to be declared an insolvent. None of the creditors appeared at the hearing of the application. On the 19th July, 1878, the respondent was declared an insolvent, but the court did not appoint a receiver of his property, which was of a very small value. Only one creditor came to prove his debt. No schedule was framed as required by section 352 of the Code. The representative of that creditor, three years later, applied for the sale of the property inherited by the insolvent, and upon notice thereof, an assignee of one of the creditors named in the application by a deed of assignment dated April, 1878, applied to prove his claim. It was held that section 352 provides for proceedings prior, while 353 for proceedings subsequent to the framing of the schedule; that separate appeals are given, in clause 17 of section 558, in respect of the different orders that may be passed thereunder,

This Article governs applications made under section 352 of C. P. O. before the framing of the schedule.

352 provides for proceedings prior, while 353 for proceedings subsequent to the framing of the schedule.

(1) I. L. R., 8 Bom., 257. (2) I. L. R., 6 All., 143.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

Article 174 governs applications under section 353.

while a special limitation of 90 days from the date of the publication of the schedule under Article 174 governs applications under section 353, and that the present application cannot be treated as one made under section 353, for at the date of its presentation no schedule had been framed and consequently it was in the nature of a tender of proof of debt under section 352. The court further held that the appellant's right to apply accrued at the date of the declaration of insolvency and that this Article governed it.

Collector's application to recover court fee due to Government falls under this Article.

(g) In *Appayya v. the Collector of Vizagapatam*,⁽¹⁾ plaintiff and two defendants, in a pauper suit, were ordered, in a decree passed upon a Razinamah on the 28th March, 1876, to pay the stamp duty to Government in equal shares, and the plaintiff paid his one-third on the 17th July, 1878. In March, 1881, the Collector, under section 411 of C. P. C., applied to recover the remaining duty. The District Judge considering that the payment by plaintiff saved the claim from limitation allowed the claim. The High Court, holding that payment by plaintiff of his share of the costs will not prevent limitation from running against the orders severally liable, observe: "We are of opinion that the Government is not entitled to any exemption from the provisions of the Limitation Act relating to applications. If the maxim on which the counsel for the Crown relies applies to this country and the Crown is not bound by the provisions of any Act, unless they are expressly declared binding on the Crown, it may be inferred from the circumstance that this Act contains provisions prescribing a limitation to the Government for the institution of suits and presentation of Criminal Appeals, that the Legislature contemplated that the Crown should be subject to the provisions of the Act and

Government are not entitled to any exemption from the provisions of the Limitation Act.

(1) I. L. R., 4 Mad., 155.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

should enjoy a privilege to the extent expressed and no further."

(h) In *Raghubans Gir v. Sheosaran Gir*,⁽¹⁾ decree-holder applied for execution of his decree of the 6th February, 1877, on the 7th idem. The debtor's objection was rejected on the 16th April, 1877, and the order was upheld in appeal on the 17th February, 1878, and in the second appeal on the 31st May, 1878, the debtor sued to contest the order and was unsuccessful. In the meantime, the creditor applied for execution on the 27th March, 1878, and was struck off with a direction that he should file fresh application when the record was returned by the High Court. The creditor applied for execution on the 28th May, 1881, referring to the court's order upon his former application. It was held that this was not an application within the meaning of Article 179, but was governed by this Article and that limitation began to run when the record was returned by the High Court.

Creditor's application for execution under court's order that he should apply for execution when record was returned falls under this Article.

(i) In *Sham Karan v. Piari*,⁽²⁾ decree was dated 9th August, 1877. On the 4th May, 1878, execution was taken by arrest and attachment. On the 27th August, 1878, the debtor from the Civil Jail applied for his release stating he had agreed to pay the debt by instalments and to the execution of the whole decree in default. On the 28th August, the court with creditor's consent released the debtor. On the 28th November, 1881, the decree-holder applied for execution. It was held that the application was one to enforce the agreement rather than one for execution of the decree within the meaning of Article 179, and that the application was governed by this Article and was within time as limitation began to run from the date of the default.

Application for execution as per agreement of creditor and debtor sanctioned by court falls under this Article.

(j) In *Buti Begam v. Nihal Chand*,⁽³⁾ a decree was

Application for execution after dismissal of appeal during

(1) I. L. R., 5 All., 243.

(2) I. L. R., 5 All., 596.

(3) I. L. R., 5 All., 469.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

which stay of execution was ordered is governed by this Article.

made against *B*, *K* and *Z*. On the 13th May, 1879, application was made for execution of the decree against *B* and *K*. In August 1879, *Z*, who had preferred an appeal in the suit, applied on that ground for the stay of execution, and on the 22nd August, 1879, the court on the same ground ordered execution to be stayed. On the 16th December, 1879, *Z*'s appeal was dismissed. On the 24th June, 1882, an application for execution of the decree against *B* was made. Following *Kalyánbhai Dipchand v. Ghanashám Lál Jadunáthji*,⁽¹⁾ it was held that application might be regarded as one for revival of the execution proceedings stayed by injunction and it was governed by this Article. This was followed in *Basant Lal v. Batul Bibi*,⁽²⁾ in which sale was staid by an injunction until the disposal of the suit filed by a claimant to the property.

Judgment-debtor's right to apply for refund of excess paid accrues when account is taken and stated on application.

(*K*) In *Mula Raj v. Debi Dihal*,⁽³⁾ decree-holder applied for execution of decree for costs on the 16th July, 1880. The decree had been previously executed from time to time since 1872. On the 3rd September, 1880, the judgment-debtor preferred a petition, alleging that the decree-holder had recovered interest which the decree did not award, and that what had thus been recovered in excess of what was due should be refunded. The court ordered an account to be taken. On the 20th December, 1880, the account was taken and the court found that the decree-holder had recovered Rs. 130 in excess. The judgment-debtor's regular suit for its recovery having been rejected on the 4th January, 1883, applied to the executing court for the refund thereof. The Lower Appellate Court held that the application was barred, as more than three years had elapsed from the 20th November, 1872, when the money now claimed was paid. It was held,

(1) I. L. R., 5 Bom., 29.

(2) I. L. R., 6 All., 23.

(3) I. L. R., 7 All., 371.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

that the right to apply for the refund of the excess amount accrued at the time when the account was taken and stated on the judgment-debtor's application, in the course of the proceedings in execution.

(1) In *Oriental Bank Corporation v. Charriol*,⁽¹⁾ the question was whether the Limitation Act applied to the exercise by court of powers conferred on it by section 32 as to bringing in new persons as parties and altering positions of parties already named. It was held that no question of limitation can arise with respect to the court's power to make an order adding a party defendant to a suit.

Court's power to add parties is not affected by limitation.

(m) In *Bhojrub Dass Johurry v. Domen Thakoor*,⁽²⁾ the suit was commenced in September, 1878, in the name of the sole plaintiff, who died in November, 1878. Probate of his will was not obtained until April, 1879. Executors applied for the revival of the suit in their names or for an order of abatement under section 366, and for its cancellation under section 371, and for their names being entered upon the record. It was held that upon the death of a sole plaintiff, if no application to revive is made within 60 days from the date of the plaintiff's death, the suit abates. But the court may, under section 371 of the Code of Civil Procedure, revive the suit on the application of the legal representative of the plaintiff, within three years from the time when the right to apply accrues, if he can show that he was prevented by sufficient cause from continuing the suit. The application was held to be governed by this Article. In *Govind Chunder Goswami v. Rungun Money*,⁽³⁾ both the parties died in 1879. After decree for the performance of trust and for certain enquiries for the purpose of settling a scheme to carry out the trust, the case was struck off

Application to revive a suit. ordered to abate held to fall under this Article. In a subsequent case it was held not to fall under this Article.

(1) I. L. R., 12 Calc., 642. | (2) I. L. R., 5 Calc., 139.

(3) I. L. R., 6 Calc., 60.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

for default in 1875. In 1879, plaintiff's heir sued the Administrator of defendant to have the original decree carried out. The court allowing the plaint to be amended in the form of a petition under section 372 of the Code, held that the application was not barred under this Article, and that even if this Article was applicable, the application would not be barred, limitation running from the time the suit was allowed to be reconstituted.

Application to amend decree falls under this Article.

(n) In the matter of the petition of *Gaya Prasad v. Sikri Prasad*,⁽¹⁾ it was held that an application to amend a decree, which is found to be at variance with the judgment, under section 206 of C. P. C. is governed by this Article.

In the case of decree for possession and mesne profits, application for ascertaining mesne profits is one for obtaining a final decree and not for execution, the previous decree having been in that respect interlocutory. (June 1886.)

(o) In *Anando Kishore Dass v. Anando Kishore Bose*,⁽²⁾ in execution of a decree for possession of certain lands and for mesne profits, dated 15th August, 1878, possession having been obtained in August, 1880, two decree-holders, one of whom was a minor, applied on the 4th April, 1882, for ascertainment of the amount of such mesne profits. Upon that application, the Amin was directed to ascertain the amount due, but after repeated reminders had been sent him, and no reports being submitted, the execution case was struck off the file on the 9th October, 1882. The minor judgment-creditor having attained his majority on the 17th April, 1885, an application was made by both decree-holders for execution of the decree by ascertainment of the amount of mesne profits and for the recovery of the amount when ascertained. The judgment-debtors pleaded limitation. It was held, that the application was not an application for execution of the decree and that the decree was divisible into two parts, and the present application must be treated as for the purpose of obtaining a final decree regarding the

(1) I. L. R., 4 All., 23.

(2) I. L. R., 14 Calc., 50.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

mesne profits, the previous decree having been in that respect merely interlocutory. The High Court followed *Baroda Sundari Dabia v. Fergusson*,⁽¹⁾ and *Dildar Hossein v. Mujeedunnissa*,⁽²⁾ and dissented from *Hem Chunder Chowdhry v. Brojo Soondary Debee*.⁽³⁾ It was further held, that the provisions of Article 178 applied to an application to make a decree complete. In the last of the above three cases, the first of the two cases were not cited. But in the first case the Judges were of opinion that the decree-holder was not bound to apply for making the decree complete within three years, and they have not considered the provisions of Article 178, which applies to a decree-holder's application for making the decree complete.

(p) It was also held, that section 8 of the Limitation Act had no application to the case, and that therefore so far as the application of the major decree-holder was concerned, his remedy was barred, as his application should have been made within at least three years from the date of delivery of possession of the lands decreed. The remedy of the minor decree-holder was not barred under section 7, as the other decree-holder could not give a valid discharge without his concurrence, and that under section 231 of the Code of Civil Procedure, he was entitled to execute the whole decree, as though the remedy of the major decree-holder was barred, his right was not extinguished. In this case, the judgment-debtors were made liable as wrong-doers and a discharge given by one of the decree-holders could not have been a valid discharge binding upon the other; this case was distinguished from *Ahamudeen v. Grish Chunder Shamunt*,⁽⁴⁾ which was a case of money due to joint-creditors under a contract,

In case of two joint decree-holders for damages, though adult decree-holder is barred, minor decree-holder can execute the whole decree as adult decree-holder cannot give valid discharge without the concurrence of the other. (June 1886.)

(1) 11 C. L. R., 17.

(2) I. L. R., 4 Calc., 629.

(3) I. L. R., 8 Calc., 89.

(4) I. L. R., 4 Calc., 350.

Description of application.	Period of limitation.	Time from which period begins to run.
<p>179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, Section 230.*</p> <p>be a review of judgment) the date of the decision passed on the review, or</p> <p>4 (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or</p> <p>5 (where the notice next hereinafter mentioned has been</p>	<p>Three years, or where a certified copy of the decree or order has been registered, six years.</p>	<p>1 The date of the decree or order, or</p> <p>2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or</p> <p>3 (where there has been a review of judgment) the date of the decision passed on the review, or</p> <p>4 (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or</p> <p>5 (where the notice next hereinafter mentioned has been</p>

* 230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree, or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates, (namely) :—

- (a) the date of the decree sought to be enforced, or of the decree (if any) on appeal affirming the same, or
- (b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

issued) the date of issuing a notice under the Code of Civil Procedure, Section 248, or

- 6 (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.*

Explanation I.—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in Clause 4 of this Number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.

Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.

Explanation II.—“Proper Court” means the Court whose duty it is (whether under Section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.

(a) As to what are the applications which can be considered as a step in aid of execution within the meaning of clause 4, Article 179, the rulings of the High Court are conflicting. Innes, J., in *Kuubi v. Seshagiri*,⁽¹⁾ observes the right to execute a decree has been much curtailed

As to what applications are steps in aid of execution, decisions are conflicting. Observations of Innes, J.

(1) I. L. R., 5 Mad., 141.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

Act should be construed so as to prevent the defeat of *bond fide* endeavours to secure the fruits of a decree once obtained.

C. H.

"Date of applying" means date of presentation. (Jan. 1878.)

Turner, C. J. observes that any application made during the pendency of proceedings might be held to give a date from which to calculate time.

C. H. and M. H. held in January and July, 1878, court might consider whether decree was barred on the date of any prior application for execution.

by the provisions of section 230 of the Civil Procedure Code, and the provisions of the Limitation Act should be construed as far as possible so as to prevent the defeat of *bond fide* endeavours to secure the fruits of a decree once obtained; clause 4 refers to an application for actual execution, and then to a step in aid of execution, and this leads to the inference that it may be some preliminary proceeding prior to actual execution. This view receives support from clause 5, which provides that notice under section 248 of the Civil Procedure Code, to show cause why the decree should not be executed, is sufficient to save the Statute. The C. H. in *Rajkumar Banerji v. Rajlaxhi Dabi*,⁽¹⁾ held that a mere order passed in execution irrespective of any application should not be considered as an application within the meaning of this Article.

(b) The words "date of applying" occur in this Article as in Article 167 of Act IX of 1871. In *Fakir Muhammad v. Ghulam Hussain*,⁽²⁾ the Full Bench held, that the date on which the application for the execution of a decree is presented, and not any date on which such application may be pending, is the "date of applying." Turner, C. J., remarks: "The court may not feel constrained to hold that by the term "applying" we are to understand only an application to execute the decree. Any application made to a court during the pendency of proceedings in execution to enforce or keep in force the decree, might be held to give a date from which limitation might be calculated, and I am confirmed in this view by the more explicit language of the Act recently passed."

(c) In *Unnoda Persad Roy v. Sheikh Koorpan Ally*,⁽³⁾ it was held that on the presentation of the last of a series of applications made for the execution of a decree, the court is competent to consider the question whether, on

(1) I. L. R., 12 Calc., 441. | (2) I. L. R., 1 All., 580.

(3) I. L. R., 3 Calc., 518.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

the date of making a prior application for execution, the decree sought to be enforced was barred by limitation, and that notwithstanding the fact that notice of such prior application had been served on judgment-debtor under section 216 of Act VIII of 1859. This was followed by the Madras High Court in *Prabhacararow v. Potanah*,⁽¹⁾ in which it was held that if any one of the series of applications had been barred, that bar was not removed by the circumstance that the judgment-debtor had allowed the service of notice on him with reference to the barred application to pass unchallenged.

Bar is not removed by judgment-debtor allowing service of notice on him to pass unchallenged.

(d) In *Mangal Prashad Daschit v. Thanea Ranto Lal hiry Chondry*,⁽²⁾ the last application for execution dated 22nd September, 1877, was rejected as barred on the ground that the decree was dead on the 5th September, 1874, by reason of the application of that date not having been made within three years from the preceding application of the 30th November, 1871, which was the fifth petition for execution. The sixth petition was presented on the 5th September, 1874, and properties were attached and sale proclamations were issued, and the sale was stopped for seven days on the creditor's petition, and the debtor admitting the debt had applied for suspension of sale for three months. It was held by P. C., that as the judge having had jurisdiction to decide whether or not the decree was barred, his order that attachment should issue, whether it was right or wrong, must be considered to have determined that the decree was not barred, and that the order was valid and binding in the same way as a decree for plaintiff for a barred debt would be valid unless reversed on appeal.

P. C. held an order right or wrong implying decision on limitation is valid and binding until reversed.

Court ordering attachment must be considered to have determined that the decree was not barred.

(e) In *Srihary Mandul v. Murari Chowdhry*,⁽³⁾ decree-holder applied in March, 1884, to the court of the

Court to which a decree is transferred for execution is competent to deter-

(1) I. L. R., 2 Mad., 1.

(2) I. R., 8 I. A., 123.

(3) I. L. R., 13 Cal., 257.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

mine the plea of limitation.
(July 1886.)

Subordinate Judge of Moorshedabad (where the decree was passed) for transfer of the decree to the District Court of Beerbhoom for execution. The transfer was made, and on application by the decree-holder, the judgment-debtor's properties in Beerbhoom were attached. Thereupon the judgment-debtor objected to the attachment, and obtained an order under section 239 of the Code of Civil Procedure staying the execution proceedings. The judgment-debtor then applied to the Court of the Subordinate Judge at Moorshedabad, objecting to the execution of the decree on the ground that it was barred by limitation. The objection was overruled by the Subordinate Judge, and his decision was upheld on appeal by the District Judge. On second appeal to the High Court, it was held that the Moorshedabad Court was competent to hear and determine the plea of limitation. It was further held, that the fact of the judgment-debtor's not raising the plea of limitation in the Beerbhoom Court did not, under the circumstances, preclude him from relying on it in his subsequent application to the Court at Moorshedabad.

B. H. held that a competent court's decision on limitation has the effect of *res judicata*.
(Sep. 1881.)

(f) *Manjunath Badra Bhat v. Venkatesh Govind Shanbhog*,⁽¹⁾ held that a decision by a competent court, that an application for the execution of a decree is barred by limitation has the effect of *res judicata*, and that although such decision may be erroneous, the question of limitation cannot be re-opened as long as the decision remains unreversed in appeal. The court further held, that a decision that an application is not time-barred has a similar effect. In *Bandey Karim v. Romesh Chunder Bundopadhyay*,⁽²⁾ it was held that a decision that execution is barred by limitation when it becomes final without an appeal will, upon a subsequent application for execution, operate as a bar to execution.

C. H.
(May 1882.)

(1) I. L. R., 6 Bom., 54. | (2) I. L. R., 9 Calc., 65.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

(g) C. H. held in *Mahomed Hossein v. Parundur Mahto*,⁽¹⁾ that the direction in section 4 of the Limitation Act that an application made after the period shall be dismissed, does not take away the jurisdiction of the court in respect of the application in any way, and that if the court erroneously holds that an application is not barred, such order is not a nullity, but remains in full force until set aside and that sale made in pursuance of that order is a valid sale until it was set aside.

C. H.
If the court erroneously holds that an application is not barred, the order is not a nullity and sale made under it is valid.
(January 1886.)

(h) In *Mina Konwari v. Juggat Setani*,⁽²⁾ the respondent who was mother of the original debtor who had succeeded to the estate of her childless grandson, had once in 1878, and again in February, 1880, obtained postponement of sale by petitions. In May, 1880, she pleaded that execution was barred by lapse of time. It was held that judgment-debtor can, notwithstanding her having filed such petitions for postponement of sale, maintain that execution was barred by lapse of time. The petition is not an intentional causing or permitting the decree-holder to believe that the judgment-debtor admits that the decree can be legally executed and occasions no estoppel within the Indian Evidence Act of 1872, sec. 115. In this case the petitions appeared to have been of a very suspicious character, and there was no evidence that they were authorized by the respondent, who denied knowledge of them.

P. C. held that debtor obtaining postponement of sale might plead limitation, and court can hear it.
(June 1883.)

(i) In *Dildar Hossein v. Mujeebun-nissa*,⁽³⁾ plaintiff obtained a decree for possession and mesne profits in March, 1863, secured possession of land in March, 1863, and applied for mesne profits in March, 1866. The amount was ascertained and confirmed on appeal in August, 1871. The case was struck off in August, 1872. In August, 1874, the decree-holder applied for the realization of the amount. The judgment-debtor pleaded that

Proceedings after original decree for possession for ascertaining mesne profits are proceedings in continuance of the original suit.
(Nov. 1878.)

(1) I. L. R., 11 Cal., 287. | (2) I. L. R., 10 Cal., 196.

(3) I. L. R., 4 Cal., 629.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

A decree for possession and for mesne profits is divisible into two parts.
(June 1884.)

Application for ascertaining mesne profits is an application for final decree.

Such are the proceedings held to ascertain the value of improvements under decree for redemption of kanam.
(Nov. 1884.)

the decree was barred. It was held, that when a decree is made under section 197, proceedings taken after the original decree for possession for the purpose of determining the amount of mesne profits payable to the plaintiff are in effect proceedings in continuance of the original suit, and that until those proceedings are brought to a close, and a declaration has been made as to the amount actually due, it cannot be said that any decree for any specific sum of money exists. Following the above decision, the Calcutta High Court, in *Anando Kishore Dass Bakshi v. Anando Kishore Bose*,⁽¹⁾ held that a decree for possession of land and mesne profits is divisible into two parts; one for possession of land, and the other for mesne profits. That part of it which directs possession to be awarded to the decree-holder is final, but the other part is merely an interlocutory decree, declaring that the decree-holders are entitled to recover mesne profits, and it would become final when the amount of the mesne profits would be fixed by the Court. An application for ascertainment of the amount of such mesne profits is an application by the decree-holder moving the court to make a final decree regarding mesne profits. Although in form it is an application for execution, in reality it is not so. Such application is governed by the provisions of Article 178. (See *Note O*, under Article 178, p. 640.)

(j) The Madras High Court followed the above decision in *Krishnan v. Nilakandan*,⁽²⁾ which decreed surrender of kanam property on payment of the kanam and purangadam amount, and the value of improvement to be determined in execution to be paid to such of the defendants as should be found entitled. On the 12th August, 1880, the plaintiff applied for execution, and on the 23rd September, 1881, an order was passed that execution should issue on payment into court by the plaintiff of the

(1) I. L. R., 14 Calc., 50. | (2) I. L. R., 8 Mad., 137.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

mortgage amount, and the value of improvements which had then been ascertained. The plaintiff having failed to deposit the said amount, the application for execution was struck off the file on the 10th November, 1881. On the 8th December, 1883, the plaintiff applied again for execution, and objection was taken that the application was barred by limitation. It was held that the application was not barred.

(k) In *Sheikh Khoorshed Hossein v. Nubbee Fatima*,⁽¹⁾ the plaintiff obtaining a decree in June, 1871, against the defendant, a co-sharer for partition, took out execution under which a greater part of the land had been partitioned. The plaintiff, dissatisfied with the partition made, applied in November, 1876, to have the execution proceedings struck off the file, whereupon the defendant expressed his willingness to carry on the execution proceedings. The Lower Courts rejected the plaintiff's petition and directed the partition to continue at the defendant's expense. On second appeal by plaintiff, it was held that as the execution proceedings taken either by one shareholder or the other, were taken on behalf of both, limitation did not apply. A decree for partition is not like a decree for money or the delivery of specific property, which is only in favour of the plaintiff in the suit. It is a joint declaration of the rights of persons interested in the property of which partition is sought, and such a decree when properly drawn up is in favour of each shareholder or set of shareholders having a distinct share.

Defendant may execute a partition decree awarding each shareholder or a set of shareholders distinct share. (Feb. 1877.)

A decree for partition if properly drawn up is in favour of each shareholder or set of shareholders, and execution taken by one is taken on behalf of all.

(l) In *Hurro Pershad Roy Chowdry v. Bhupendro Narain Dutt*,⁽²⁾ it was held that the period of limitation within which application must be made for execution of an order for costs passed by the High Court when rejecting a petition for leave to appeal to the Privy Council is that specified in schedule 2, Article 167 of Act IX of 1871.

Execution of High Court's order for costs held to fall under the corresponding Article 167 of Act IX of 1871. (June 1880.)

(1) I. L. R., 3 Calc., 551. | (2) I. L. R., 6 Calc., 201.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

Decree holder's right to money or jewel deposited by debtor to stay sale pending appeal, is not affected, even after decree becomes barred.
(Feb. 1878.)

(M) In *Sheo Gholam Sahoo v. Rahut Hossein*,⁽¹⁾ the decree-holder obtained an order for sale of the debtor's property, whose plea of bar was rejected by the Lower Court. On the debtor's appeal, his muktia, in March, 1870, deposited money and jewellery as security for staying execution, pending the disposal of the appeal in which the order of the Lower Court was confirmed. In 1876, the debtor's muktia claimed the refund of the deposit on the ground that the decree had become barred and that the creditor had not drawn it for more than three years. The Lower Appellate Court ordered the refund. It was held that neither the depositor nor the judgment-debtor can claim the refund of the deposit. It is observed that when money or moveable property is deposited in court in such a case as the above, the court, upon confirmation of the order for sale, holds the deposit in trust for the decree-holder and is at liberty to realize it and pay the proceeds over to him to the extent of his decree.

A. H.
Application withdrawn could have no effect as one made for execution under this Article.
(Jan. 1886.)

(N) In *Kifayat Ali v. Ram Singh*,⁽²⁾ the decree-holder applied on the 20th July, 1880, for execution of his decree dated 7th June, 1879; the decree having erroneously described certain parties, the court, on the 30th August, 1880, on the representations of the decree-holder's vakil that he would execute it after it had been corrected and that it might be returned, ordered that the execution case be dismissed and the decree returned. On the 28th April, 1882, the decree was amended, and on the 19th February, 1883, the next application for execution was made. It was held that the question of limitation must be determined as if the application of the 20th July, 1880, had never been filed, applying sections 374 and 647 of the C. P. Code to the case.

B. H.
Application filed and withdrawn has its effect for

(O) In *Pirjade v. Pirjádé*,⁽³⁾ decree-holder had, with

(1) I. L. R., 4 Cal., 6. | (2) I. R. R., 7 All., 350.

(3) I. L. R., 6 Bom., 681.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

the permission of the court, withdrawn his application of the 17th April, 1878, for execution, and subsequently applied for execution on the 15th April, 1881. The court held in September, 1882, that in counting the prescribed period of three years, application withdrawn must be discarded as if it had never been presented, and that section 14 of the Limitation Act does not remove the bar created by section 374 of the Criminal Procedure Code. The same question arose in July, 1885, in *Tárachánd Megradj v. Kashinath Trimbak*,⁽¹⁾ in which the decree-holder, at the request of the debtor, withdrew his application of July, 1880, with the permission of the court, to make another application, and subsequently applied for execution in November, 1882. It was held that section 374 of the Criminal Procedure Code as to withdrawal of suits does not apply to applications for execution, and that an application has its effects for the purpose of limitation as soon as it is admitted, and whether it is subsequently withdrawn or allowed to remain dormant is immaterial. In *Eshan Chunder Bose v. Pranath Nag*,⁽²⁾ a Full Bench of the Calcutta High Court held, that a decree-holder is entitled to execute his decree upon his merely showing that he had applied for execution not more than three years before although he had taken no proceedings on the application.

the purpose of limitation.
(Sept. 1882.)

C. H.

(p) In *Macgregor v. Tarni Churn Sircar*,⁽³⁾ a decree-holder, on the 8th July, 1885, applied for execution of a decree dated the 10th July, 1873, omitting to set out specifically in such application a description of the immoveable property sought to be attached. On the 24th July, he applied for and obtained one month's time to file a list of these properties, and on the 7th August, after filing the list, applied for the attachment and sale of such properties. The judgment-debtor contended that execution

Execution application of 8th July, 1885, omitting to set out specifically description of real property to be attached, and application of 24th July, applying for and obtaining one month's time to file a list of property treated as one application dating from 8th July. (August 1886.)

(1) I. L. R., 10 Bom. 63. | (2) 22 Calc., W. R. 512.

(3) I. L. R., 14 Calc., 124.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

was barred by limitation. It was held, that the omission to file, with the application of the 8th July, the list describing specifically the properties sought to be attached, was a mere defect of description which could be remedied under section 245 of the Code of Civil Procedure by allowing an amendment to be made: and further, that the two applications of the 8th and 24th July should be considered as one entire application dating from 8th July. The court followed *Syad Mahomed v. Syad Abedoolah*.⁽¹⁾

Execution against one of several legal representatives of a debtor takes effect against all.
(Feb. 1881.)

(q) In *Ram Annj Sewak Singh v. Hingu Lal*,⁽²⁾ last application for execution against the son and widow of a sole judgment-debtor was made on the 5th of April, 1880. On the 17th May, decree-holder moved the court to amend the application by adding the name of the minor grandson of the deceased debtor through his guardian. It was objected that execution was barred as against him. It was held that an application for execution of a decree against one of the several legal representatives of the deceased judgment-debtor takes effect for the purpose of limitation against them all.

A. H.
Payment out of court, though not certified to court, might be proved to meet limitation.
(March 1882.)

(r) In *Sham Lal v. Kanahia Lal*,⁽³⁾ a decree payable by instalments provided that in default of payment of two instalments, the whole decree should be executed. The decree-holder applied for execution of the whole decree on the ground that default had been made in payment of the 3rd and 4th instalments. The judgment-debtor objected that the application was barred by limitation as he had made default in payment of the 1st and 2nd instalments, and three years had elapsed from the date of such default. The decree-holder offered to prove that those instalments had been paid out of court. Following the F. B. ruling in *Fakir Chand Bhose v. Madan Mohan Ghose*,⁽⁴⁾ it was held that the decree-holder was entitled to

(1) 12 C. L. R., 279.

(2) 1. L. R., 3 All., 517.

(3) 1. L. R., 4 All., 316.

(4) 4 B. L. R., 130.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

give such proof in order to defeat the judgment-debtor's plea of limitation, notwithstanding such payment had not been certified to the court. This was followed in *Zahur Khan v. Bakhtawar*.⁽¹⁾

A. H.
(January 1885.)

(S) An order under section 210 of the C. P. C. empowering the courts to direct payment of the decree amount by instalments virtually alters the decree, and it can be executed only subject to that alteration. A judgment-debtor under decree of March, 1878, applied in June, for two years' time to pay the decree amount, and the application was allowed *ex parte* after notice to the judgment-creditor. The decree-holder's application for execution in July, 1882, was held not barred. *Tata v. Ramachandra*.⁽²⁾

An order under section 210 directing payment of decree amount by instalments, virtually alters the decree.
(Sept. 1883.)

In *Jhoti Sahu v. Bhubun Gir*,⁽³⁾ decree was dated 3rd December, 1877. On the 23rd February, 1878, an application was made for execution in which the decree-holder stated that the judgment-debtor had agreed to pay the balance then due on the 13th August, 1878. The application was then struck off on the 26th June, 1878. On the 30th June, 1881, the decree-holder again applied for execution, and on the 11th July, 1881, the judgment-debtor, with the consent of the decree-holder, applied for time to pay the balance due, till the 8th September, 1881, and that application was also struck off. On the 1st March, 1883, the decree-holder again applied for execution; the Lower Appellate Court rejected the application as barred. It was held that the application was not barred by limitation upon the ground that the application made by the judgment-debtor, on the 11th July, 1881, alleging that he had come to an arrangement with the decree-holder for the payment of the amount due by instalments, having resulted in its being registered and the proceedings struck

C. H. held registering the debtor's application with creditor's consent for payment by instalments and striking out proceedings, amounted to a decree passed on that date.
(Dec. 1884.)

(1) I. L. R., 7 All., 328. | (2) I. L. R., 7 Mad., 152.

(3) I. L. R., 11 Calc., 143.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

off, amounted to a direction that the decretal amount be paid by instalments as stipulated in the petitions, and that this being so, there was a decree passed on that date under the provisions of the second paragraph of section 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution.

Right of a party to execution proceedings is not affected by case being struck off.
(Feb. 1884.)

(t) A decree was obtained on the 10th July, 1858, and the last application for execution, before Civil Procedure Code of 1877, was made on the 10th January, 1876; this was struck off. The decree-holder's application of the 13th June, 1879, was struck off on the 17th January, 1880, by the court to which the decree was transferred, on the ground that it was barred by section 230 of the Civil Procedure Code. In April, 1881, the application was revived by the order of the Appellate Court. In June, 1881, it was again transferred to another court, which struck off the petition for default in August, 1881. In March, 1882, the proceedings were revived and again struck off on the 2nd of June. On the 11th July, 1882, when the decree-holders made an application to restore the proceedings, it was held that execution of the decree was not barred by section 230 of the Code of Civil Procedure, and that the rights of the parties to execution proceedings are not affected in any way by the case being "struck off" by the court, there being no provision in the Civil Procedure Code for such a course. The only proper mode of dealing with a case, whether a regular suit or a miscellaneous proceeding, when the parties do not appear, is to dismiss it. A case so dismissed can be restored on application under section 108, which is, by section 647, applicable as well to execution of proceedings as to suits and appeals. *Biswa Sonan Chunder Gossyamy v. Binanda Chunder Dibingar Adhikar Gossyamy.*⁽¹⁾

The proper mode of dealing with a suit or proceeding is to dismiss it when parties do not appear. It can be restored under sec. 108 on application, which is, under section 647 applicable to execution.

Party not to suffer from court's omission.
(March 1884.)

(u) Where an informal application for execution of a

(1) I. L. R., 10 Calc., 416.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

decree which had been ordered to be amended was left on the file of the court without being disposed of in any way till more than three years after the date of the decree, it was held that it was the duty of the court to dismiss the application when it found that it was informal, and thus allow the applicant an opportunity of putting in a proper application, and that the decree-holders should not be made to suffer for such omission on the part of the court, and that the informal application could not be treated as a nullity and that the application presented three years after the date of the decree was in continuation of the informal one, and thus consequently the decree was not barred. *Fuzloor Ruhman v. Altaf Hossein.*⁽¹⁾

In *Appaya v. The Collector of Vizagapatam*,⁽²⁾ which was an application made by the Collector after three years from the date of the decree to recover stamp duty due to Government in a pauper suit, it was held that the Government is not entitled to any exemption from the provision of the Limitation Act relating to applications.

(V) In *Behari Lal v. Salik Ram*,⁽³⁾ the decree-holder applied in March, 1875, for issue of a notice to the debtor under section 216 of Act VIII of 1859, without stating, as required by section 212, the mode in which the assistance of the court was required. In March, 1875, notice was issued, and in April, 1875, the case was struck off the file for default. In April, 1877, decree-holder again applied for execution. It was held that the application of March, 1875, was one to enforce or keep in force the decree for the purpose of Article 167 of Act IX of 1871, and that limitation should be computed from the date that notice to the judgment-debtor was issued.

(W) In *Chunder Coomar Roy v. Bhogobutty Prosonno Roy*,⁽⁴⁾ it was held that "applications to enforce a decree"

Application made three years after first informal application which was ordered to be amended, but left undisposed of was treated as one made in continuation of the first.

Government is not entitled to exemption from Limitation Act. (Sep. 1881.)

Limitation computed from the date of issue of notice to the debtor under Article 167 of Act XI of 1871, and from date of applying under section 216 of Act VIII of 1859 simply praying for notice. (June 1878.)

C. H. Issuing warrant or attachment or other application of an incidental

(1) I. L. R., 10 Calc., 541.

(2) I. L. R., 4 Mad., 155.

(3) I. L. R., 1 All., 675.

(4) I. L. R., 3 Calc., 235.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

kind did not give fresh starting point under Act IX of 1871. (Sep. 1877.)

in para. 4 of Article 167 of Act IX of 1871, mean application under section 212 or otherwise by which proceedings in execution are commenced, and not applications of an incidental kind made during the pendency of such proceedings, and that the issuing of an attachment was an incidental proceeding. Although an application for warrant of attachment is an application to enforce a decree in the course of proceedings during execution, it is not the initiatory application under section 212. Following the above decision, the Madras High Court in *Prabha-cararow v. Potannah*,⁽¹⁾ held that the issuing of a warrant during execution was not application to enforce or keep the decree in force.

M. H.
(July 1878.)

B. H. held Article 167, clause 4 of Act IX of 1871 is wide enough to include any application to enforce or keep in force decrees or orders. (August 1877.)

(X) In *Jamnadas and others v. Lalitaram and others*,⁽²⁾ an order for attachment of a pension in satisfaction of a decree obtained on the 10th December, 1863, was made on the 16th April, 1869. After the passing of the Pensions Act (XXIII of 1871,) the Deputy Collector refused to continue paying the pension to the decree-holder, and returned to the court the warrant of execution issued under the order of 16th April, 1869, and an order finally disposing of the application for attachment was made on the 14th June, 1872. On the 19th June, 1872, the decree-holder presented a fresh application, praying that the attachment of the pension might be continued, and a letter be written to the Collector directing him to continue to pay the pension to the decree-holder, as directed by the order of 16th April, 1869. It was held, that such last-mentioned application came within clause 4 of Article 167 of schedule 2 to Act IX of 1871, and that, consequently, an application on 24th July, 1874, for execution of the decree of 10th December, 1863, was not barred, and that the decree might properly be enforced against property of the defendant mentioned in the application

(1) I. L. R., 2 Mad., 1. | (2) I. L. R., 2 Bom., 294.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

of 1874, other than the property mentioned in the applications of 1869 and 1872. It is observed that the "application" spoken of in Article 167, clause 4 of schedule 2 to Act IX of 1871, is not merely such an application as is contemplated by section 212 of Act VIII of 1859, but includes an application to keep in force a decree or order, and that the language of Article 167, clause 4 of schedule 2 to Act IX of 1871 is wide enough to include any application to enforce or keep in force a decree or order, and consequently an application to enforce a decree by the attachment of a portion of the property of the defendant will keep the decree alive against the residue of his property or his person.

(y) In *Govind Shanbhog v. Appaya*,⁽¹⁾ decree-holder in July, 1870, applied for execution of his decree of November, 1867. After his death, his son, in March, 1871, by a petition, prayed for a substitution of his name and for the recovery of the decree amount. He, in January, 1874, and several times subsequently, applied for execution and his last application was in 1878. The Lower Courts rejected the case on the ground that the application of March, 1871, was not one to enforce, or keep in force the decree. It was held that that application fell within Article 167 of Act IX of 1871.

Creditor's heirs' application for substitution of his name and for recovery of debt is one within Article 167 of Act IX of 1871.

(z) Owing to an error in Procedure, a decree was passed in the name of a person described as the agent of the firm of A. The second and subsequent applications for execution were made by an agent who succeeded the agent named in the decree. Certain persons alleging that they were the proprietors of the firm, applied for the execution of the decree, and the application was refused on the ground that proceedings in execution taken by the agents not named in the decree were invalid and that the execution of the decree was therefore barred by

Execution proceedings on application by agent other than the one in the decree not invalid.

(1) I. L. R., 5 Bom., 246.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

limitation. It was held that such proceedings, however irregular, were not invalid. *Lachman Bibi v. Patni Ram*.⁽¹⁾

Insufficiently stamped application keeps decree alive.

(2-a) In *Ramasami v. Sessa*⁽²⁾ the holder of a decree dated December, 1877, applied in December, 1880, by an insufficiently stamped application, for execution, and then made his second application in March, 1882. The Lower Appellate Court rejected the application as barred on the ground that an insufficiently stamped application could not be taken as one made according to law. It was held that such an application may suffice to keep the decree alive under this Article.

Application returned for amendment but rejected for absence keeps decree alive.

(2-b) In *Ramanadan v. Pariatambi*,⁽³⁾ decree-holder's third application dated 31st October, 1879, was, on the 7th November, 1879, ordered to be returned for amendment, allowing three days for the purpose. As the decree-holder did not appear, the petition was rejected in December, 1879. In July, 1882, another application was put in for execution. It was held that the application was sufficient to keep the decree alive under clause 4 of this Article.

Application by one of two joint decree-holders for part execution will not keep decree in force.
(13th July 1881.)

(2-c) On the 14th of April, 1873, *A* and *B* obtained against *C* and *D* a joint decree for money. Execution was taken out in 1877, and limitation began to run from the 3rd May, 1877. On the 27th of April, 1880, the Collector, who represented *A*, applied for execution of a moiety, and on the 30th of April, 1880, *B* applied for execution of the other moiety. On the 30th of July, 1880, the Collector prayed for amendment of his application of the 27th of April, 1880, and for sale of the attached property in execution of the whole decree. It was held that such applications not being made in accordance with law would not keep the decree in force, and that the illegality could not be cured by a subsequent amended

A decree passed jointly in favor of several persons can only be legally executed as a whole for the benefit of all and not partially to the extent of the interest of each decree-holder.

(1) I. L. R., 1 All., 510. | (2) I. L. R., 6 Mad., 181.
(3) I. L. R., 6 Mad., 251.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

application after the time had expired. The Collector of Shahjahanpur *v.* Surjan Singh.⁽¹⁾

(2-d) In *Nanda Rai v. Raghunandan Singh*,⁽³⁾ decree jointly obtained by two persons was sold to three others, who, in November, 1873, applied for execution. In February, 1874, the rights of two of them in the decree were sold in execution of a decree against them and were purchased by two persons who made applications for execution in 1875, 1877 and 1880. They again on the 2nd January, 1883, applied for execution. It was held, following *Mungul Pershad Dichit v. Grija Kant Lahiri*,⁽³⁾ that the judgment-debtor cannot now object to the execution of the decree as their previous applications, which were not objected to at the time, must be held to be good for the purpose of keeping the decree alive.

A. H. held application by two of three decree-holders for part execution kept the decree alive. (13th July 1881.)

(2-e) In *P. P. Kuthath Haji, v. P. P. Bavotti Haji*,⁽⁴⁾ defendant applied for refund of the money recovered by Bavotti Haji in execution of a joint-decree obtained by him and three others. Money was recovered in April and July, 1878, by a process. On the 4th February, 1878, when three years had elapsed since the last application to execute the whole decree, the Sub-Judge directed the refund applied for, on the ground that the intermediate application made by Bavotti alone for partial execution had not the effect of keeping the decree alive. The District Judge reversed the Sub-Judge's order. The High Court observed that where "one of several decree-holders has applied for the execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually, we are not prepared to say that such an application would not keep alive the right to execute the decree." Such an application, even if it was refused on the ground that it is not

M. H. held application by one of four decree-holders for execution of so much as he feels himself entitled to, kept the decree alive. (October 1880.)

(1) I. L. R., 4 All., 72.

(2) I. L. R., 7 All., 282.

(3) I. L. R., 8 Cal., 51.

(4) I. L. R., 3 Mad., 79.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

warranted by the terms of the decree, would nevertheless be an application according to law and would keep in force the decree.

C. H.
One of three parties to a partition decree taking out execution falls under clause 3, exception 1. (24th Jan. 1883.)

(2-f) A consent decree for partition made between three parties contained a provision that if the plaintiffs should not have the property partitioned within two months from the date thereof, any one of the other parties to the suit might obtain partition by executing the decree. One of the parties sued out execution and obtained partition and possession of his own share. More than three years after the decree, but less than three years from the date of the application just mentioned, another of the parties applied for partition under the decree. It was held that the application was not barred by limitation under clause 3, exception 1 of this Article. *Mohun Chunder Kurmoker v. Mohesh Chunder Kurmoker*.⁽¹⁾

Moving court to order the Collector to alter registry as per decree could not keep decree in force. (July 1881.)

(2-g) In *Muhammad Umar v. Kamila Bibi*,⁽²⁾ the holder of a decree which directed that he should be maintained in possession of a share of a village by cancellation of the order of the settlement officer directing the entry of the judgment-debtor's name in the Revenue Registers in respect of such share, applied for execution of such decree, improperly asking the court executing the decree to order the Collector to amend such entry by the substitution of their names for that of the judgment-debtor in respect of such share, instead of asking it to send to such officer a copy of such decree for his information with a view to such amendment. It was held that the application not being one in accordance with law within the meaning of this Article, was not one which would keep the decree in force.

Application for return of the decree to the court that sent it for execution

(2-h) In *Krishnayyar v. Venkay Iyer*,⁽³⁾ it was held that where a decree has been transferred by the court

(1) I. L. R., 9 Calc., 568. | (2) I. L. R., 4 All., 34.
(3) I. L. R., 6 Mad., 81.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

which passed it to another court for execution, an application to the latter court to return the decree to the court which passed it for further execution is within the meaning of clause 4 of this Article.

is within this Article.
(Nov. 1882.)

(2-i) In *Hurry Charn Bose v. Subaydar Sheikh*,⁽¹⁾ decree for arrears of rent was dated 14th June, 1881; on the 14th June, 1884, the decree-holder applied for execution, stating at the foot of the application that the records of the former execution petition be placed with his application and that the immoveable property stated in that record may be attached and sold. On the 12th July, 1884, the District Munsif, registering the application, ordered the applicant to file a list of property before 26th July, and time was extended to the 12th August. On the 9th the list was filed, and on the 16th the defendant pleaded that the decree was barred; the District Munsif allowed the objection. The District Judge being of opinion that the Lower Court had no power to allow amendment of a radically imperfect application unless such amendment was made within the statutory period. Following the decision in *Syud Mahomad v. Syud Dhedullah*,⁽²⁾ which is an authority for the proposition that the court has power to allow an amendment under section 245, C. P. C., although it may be that at the time when the amendment is allowed the decree is barred by limitation, the High Court held that though the application was not in strict accordance with the provisions of section 237 of the C. P. C., it was still an application under section 235, and that execution of the decree was not barred, but that it must be limited to the property specified in the previous application.

An application which was not in strict accordance with section 237 of C. P. C. held to be an application under sec. 235.
(30th July 1886.)

In the case of application praying for attachment of property named in the former one held execution should be limited to that property.

(2-j) In *Thakur Das v. Shadilal*,⁽³⁾ decree dated 8th December, 1881, based on a simple mortgage deed,

Judgment prohibiting execution till the expiry of four months, is governed by the

(1) I. L. R., 12 Cal., 161. | (2) 12, C. L. R., 279.

(3) I. L. R., 8 All., 56.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

Limitation of
Article 178.
(Dec. 1885.)

provided that "if the judgment-debt is not paid within four months, the decree-holder shall have the power to recover it by sale of the mortgaged property." The decree-holder applied for execution on the 17th February, 1885. The Lower Appellate Court was also of opinion that the decree was barred as the decree-holder who could have executed the decree personally against the debtor within three years from the date of the judgment had not done so. It was held that the limitation of Article 178 and not Article 179 should be applied to the case, and that the application for execution having been made within three years from the 8th April, 1882, when the right to ask for execution accrued, was not barred by limitation.

Plaintiff's application of February, 1885, for refund of purchase money paid into Lower Court owing to inability to pay excess decreed by Appellate Court in July, 1881, was held to be revival of his application of May, 1883, and governed by this Article. (July 1886.)

(2-k) A decree for pre-emption was passed conditionally upon payment by the decree-holder of Rs. 1,139, and in July, 1880, the plaintiff paid this amount into court and it was drawn by the defendant in August, 1881. Meanwhile, in July, 1881, the High Court, in Second Appeal, raised the amount to be paid by the plaintiff to Rs. 2,400, but the plaintiff having allowed the time limited for payment of the excess to elapse without paying it, the decree for pre-emption became dead. In May, 1883, the plaintiff applied in the Execution Department for the refund of the deposit which had been drawn and retained by the defendant. This application was granted and the defendant ordered to refund, and this order was confirmed on appeal in January, 1885, and by the High Court in Second Appeal in May, 1885. Meanwhile the First Court had suspended execution of the order pending the result of the appeal, and in December, 1884, removed the application temporarily from the pending list. In February, 1885, the plaintiff applied for restitution of the amount deposited, asking for attachment and sale of property belonging to the defendant. This

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

application was dismissed as barred by limitation. It was held that this application was only a revival of the application of May, 1883, which was within time. It was further held that the plaintiff was, in the sense of section 583 of the Civil Procedure Code, a party entitled to a benefit by way of restitution under the decree of the High Court of July, 1881; that it was a necessary incident of the decree that he was entitled to restitution of the sum which he had paid as the sufficient price under the decree of the Lower Appellate Court; that he was competent under section 583 to move the Local Court to execute the appellate decree in this respect in his favour according to the rules prescribed for the execution of decrees in suits; that he did this in May, 1883, by an application made according to law in the proper court in the sense of Article 179 of the Limitation Act, and that his present application to the same effect being within three years from that application was within time. *Nund Ram v. Sita Ram*.⁽¹⁾

(2-1) In *Wazir Mahton v. Lulit Singh*,⁽²⁾ Lower Court's decree was passed on the 19th December, 1877, in accordance with an award. The defendant's 1st and 2nd appeal was rejected on the ground that there was no appeal. The second appeal decree was dated March, 1881. In June, 1881, plaintiff applied for execution; it was held that the Statute ran from the date that the appeal was disposed of.

"Appellate Court" means court to which appeal is preferred though it held no appeal would lie.

(2-m) In *Narsingh Das v. Narain Das*,⁽³⁾ Privy Council by an order dated 12th August, 1876, affirmed the High Court's decree dated 18th August, 1871, and the decree-holder applied for execution on the 15th July, 1879; the District Judge was of opinion that Her Majesty in Council was not intended to fall under "Appellate

A. H. held "Appeal" and "Appellate Court" include an appeal to P. C.

(1) I. L. R., 8 All., 573.

(2) I. L. R., 9 Calc., 100.

(3) I. L. R., 2 All., 763.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

C. H.

Court in this Article. It was held that "Appeal" and "Appellate Court" are intended to include appeals to Her Majesty in Council, and that if "Appeals" were restricted to the appeals presented to the Appellate Courts in India, a party appealing to Her Majesty in Council would be in a worse position as to limitation than a party appealing to a Court in India. In *Gopal Sahu Deo v. Joyram Tewary*,⁽¹⁾ it was held that even though the provisions of the additional Articles 177 and 180 in the Limitation Act of 1877 were not in the Act of 1871, the term "Appeal" in the column of the Limitation Act of 1871 includes an Appeal to the Privy Council, and the term "Appellate Court" includes the Judicial Committee of the Privy Council.

"Appeal" includes an appeal from a decree passed on a review of judgment and is not limited to an appeal from the original decree.

(2-n) In *Narsingh Sewak Singh v. Madho Das*⁽²⁾ *A* sued *B* and *C*, as mother and guardian of *D*, for money. On 23rd August, 1873, the court passed a decree against *D* only. On the 3rd November, 1875, the heirs of *A* applied for review as regards the claim against the minor. The application was granted and the decree was given against the heirs of *B*, who had died, and against the minor on the 29th November, 1876. On the 28th March, 1877, *A*'s heirs appealed to the High Court, which, dismissing the appeal, set aside the decree passed on review on the 29th November, 1876. On the 17th May, 1880, the decree-holder applied for execution of the decree dated 23rd August, 1873. It was held that the words "where there has been an appeal," include an appeal preferred from a decree passed on a review of judgment, and that the appeal contemplated is an appeal in the suit and not necessarily an appeal from the original decree in the suit.

A. H.
Application to amend decree being substantially one for review, period

(2-o) In *Kishen Sahai v. The Collector of Allahabad*,⁽³⁾ decree dated July, 1864, against all defendants was

(1) I. L. R., 7 Cal., 620. | (2) I. L. R., 4 All., 274.
(3) I. L. R., 4 All., 137.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

upset in March, 1865, on appeal by all the defendants except one *B*. The Privy Council in March, 1869, restored the original decree on appeal, in which *B* was not made a respondent. Plaintiff, in October, 1869, applied for execution, which continued up to July, 1872. In October, 1874, plaintiff applied for amendment, which was made in August, 1876. *B* was a party to the proceedings. Plaintiff subsequently applied for execution against all the defendants. It was held that the decree was enforceable against *B* also, and that the application to amend the decree being substantially one for review of judgment, gave, under Article 167 of Act IX of 1871, a period from which limitation would run in respect of the subsequent application for execution.

(2-p) In *Kristo Coomar Nag v. Mahabat Khan*,⁽¹⁾ judgment-debtor's opposition on the ground of limitation to the enforcement of the decree was overruled in January, 1876. Against that order the debtor appealed, and on the creditor opposing the appeal at the hearing, the appeal was dismissed in October, 1877. The creditor allowing the execution proceeding to drop, made a second application for execution in March, 1879. It was held that the application was barred inasmuch as the creditor's opposition to debtor's appeal does not constitute an application to the proper court for execution to take some steps in aid of execution. The appeal of the debtor does not operate as a stay of execution, for the law expressly provides against stay of execution by reason only of an appeal having been preferred. Section 545 of Act X of 1877.

(2-q) In *Sheo Prasad v. Anrudh Singh*,⁽²⁾ plaintiff obtained a decree for money *ex parte* against defendant on the 2nd December, 1874. The defendant applied for its cancellation under section 119 of Act VIII of 1859. The application was rejected, and on appeal the order

C. H.
Judgment-creditor's opposition to the debtor's appeal against court's order in execution, is not an application to take steps in aid of execution.
(Feb. 1880.)

The appeal of the debtor does not operate as a stay of execution.

A. H.
"Appeal" does not include an appeal from an order rejecting application to set aside *ex parte* decree.
(April 1879.)

(1) I. L. R., 5 Calc., 595. | (2) I. L. R., 2 All., 274

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

was confirmed on the 17th April, 1875. On the 12th April, 1878, the decree-holder applied for execution. It was held that the words "where there has been an appeal" in clause 2, Article 169 of Act IX of 1871, do not include an appeal from an order dismissing an application to set aside an *ex parte* decree under section 119 of Act VIII of 1859.

C. H. held that time runs from the disposal of defendant's appeal against order refusing to set aside *ex parte* decree. (Dec. 1881.)

(2-r) In *Latful Huq v. Sambhudin Pattuck*,⁽¹⁾ plaintiff, on the 31st May, 1876, applied for execution of an *ex parte* decree dated 7th February, 1876. The defendant's application to set aside the decree was rejected on the 15th November, 1876, and his appeal was rejected on the 19th December, 1877. The decree-holder's execution petition was struck off on the 21st February, 1877. Next application for execution was made on the 10th December, 1880, which the court held was not barred, the decree not being final until the order dismissing the appeal on the 19th December, 1877. In this case, at the instance of the defendant, execution was suspended on the 15th November, 1876, and this was continued until the disposal of the appeal on the 19th December, 1877. It was held that the plaintiff was not entitled to any deduction of the time during which execution was stayed by injunction, and that such is the present state of the law.

M. H.
Time runs from the dismissal of defendant's appeal though plaintiff had partially executed before appeal. (Nov. 1880.)

(2-s) In *Venkatarayalu v. Narasimha*,⁽²⁾ plaintiff obtained a decree against defendant on the 24th November, 1875, and on the 14th October, 1876, he got execution and sold some lands of the defendant. On 9th February, 1877, he applied to the court for payment thereof of monies lodged by the purchaser and got on that day the money. In the meantime an appeal was presented by the defendant and dismissed on the 28th March, 1877. The present application for execution was made on the 7th February, 1880. It was held that clause 2 of this

(1) I. L. R., 8 Calc., 248. | (2) I. L. R., 2 Mad., 174.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

Article, which fixes the date of the order of the Appellate Court, when there is an appeal, as the point from which the three years is to count, applied, and that the plaintiff was therefore in time, and that when there is no appeal, the date of the decree or of application is the point from which limitation counts, but not when there is an appeal.

(2-t) In *Imam Ali v. Dasaundhi Ram*,⁽¹⁾ the District Judge, on the 23rd February, 1873, affirming the decree for possession of land remanded the case to the Lower Court to determine mesne profits due on the 23rd May, 1873; an appeal was preferred to the High Court, which, in March, 1874, modified the decree for possession. In the meantime the Lower Court decreed mesne profits on the 25th April, 1873, and the District Judge confirmed it on the 7th June, 1873, before the second appeal was disposed of. In the application for execution of the decree dated 7th June, 1873, for mesne profits, it was held that limitation began to run not from the date of the District Judge's appeal decree for profits, but from the date, of the High Court's decree, as there cannot be several final decrees of an Appellate Court in one and the same case giving separate periods of limitation for separate portions of a claim in one and the same suit. (See *Notes O*, under Article 178, p. 640-641.)

A. H.
Decree in second appeal against decree for possession, while claim in the same suit for profits had been remanded, was held as final decree in execution of the decree for profit. (Nov. 1877.)

C. H.
In a recent case held that first decree for possession and mesne profits was merely interlocutory, and application for ascertainment of mesne profit was an application for final decree.

(2-u) In *Sangram Singh v. Bujharat Singh*,⁽²⁾ a decree was passed on the 11th July, 1877, against two defendants, of whom one only appealed: such appeal not proceeding on a ground common to him and the other, the decree was affirmed on the 20th November, 1877. On the 23rd September, 1880, the decree-holder applied for execution against the defendant who had not appealed. It was held that the decree as against him was barred and that the time ran from the date of the original decree.

A. H.
Time for execution against one of two defendants who has not appealed, runs from decree date. (July 1881.)

(2-v) In *Rahgunath Pershad v. Abdul Hye*,⁽³⁾ the

(1) I. L. R., 1 All., 508. | (2) I. L. R., 4 All., 36.

(3) I. L. R., 14 Calc., 26.

C. H.
Appeal from decree dismissing claim as

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

against sureties would not entitle decree-holder to calculate three years from date of appeal decree for execution against principals who were not joined in appeals.
(June 1886.)

court of first instance passed a decree in August, 1880, for Rs. 15,000, against *A*, and for Rs. 20,000 against *A* and *B* jointly, dismissing the suit as against two other defendants who were alleged to have been sureties. The plaintiff appealed against so much of the decree as dismissed the suit against the sureties, not making either *A* or *B* party respondents. The appeal was dismissed on the 1st May, 1885. On the 27th April, 1885, plaintiff applied for execution against *A* and *B*. It was held that the application was barred under this Article.

C. H.
Original decree for possession against three defendants jointly, reversed on appeal by one of them and restored in second appeal, can be executed within three years of the High Court's order.
(June 1880.)

(2-W) In *Mullick Ahmed Zumma v. Mahomed Syed*,⁽¹⁾ a decree was passed on the 14th April, 1874, for possession and costs in favour of *A* against *B*, *C* and *D* jointly. This decree was afterwards reversed on appeal by *B*, who alone claimed the property. *A* then preferred a special appeal to the High Court, and on the 29th June, 1877, the decision of the Judge was reversed and the decree of the court of first instance restored on the 30th December, 1878. *A* applied to the court of first instance for execution to issue against *C* and *D* for the costs specified in the decree passed on the 14th April, 1874; *C* and *D* successfully objected in the court of first instance and the Lower Appellate Court that more than three years having elapsed since the date of the decree, the decree for costs could not be executed, and the applications for execution were barred by this Article. It was held on appeal to the High Court, that inasmuch as *B*'s appeal had related to the whole case, and the decree obtained by him dismissing the suit would, if not reversed, have deprived *A* of his right to any costs at all, *A*, upon succeeding in getting the original decree restored upon special appeal to the High Court, was entitled to execute such restored decree at any time within three years of the order of the High Court.

A. H.
Clause 2 of this Article applies

(2-X) In *Nur-ul-Hasan v. Muhammad Hasan*,⁽²⁾ a suit

(1) I. L. R., 6 Calc., 194. | (2) I. L. R., 8 All., 573.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

for pre-emption was decreed against the vendors, the purchaser, and another set of pre-emptors, in March, 1882. The last mentioned defendants alone appealed, and their appeal was dismissed in May, 1882. In May, 1885, the decree-holders applied for execution of the decree. The application was objected to by the purchaser as barred by limitation, having been filed more than three years from the passing of the decree, and it was contended that Article 179, clause 2, did not apply to the case inasmuch as the purchaser did not appeal from the original decree. Article 179 must be construed as intended to apply without any exceptions to decrees from which an appeal has been lodged by any of the parties to the original proceedings, and should certainly be applied to cases where the whole decree was imperilled by the appeal. It was held that Article 179 was applicable, and that the application being made within three years from the date of the Appellate Court's decree, was not barred by limitation. Oldfield, J., observes: "I think the terms of Article 179, clause 2, are so clear and distinct that they scarcely admit of any such distinction being drawn. Under that law, the period for the execution of a decree will begin to run, where there has been an appeal, from the date of the final decree or order of the Appellate Court. It contains nothing as to whether the appeal shall have been made by all the parties, or by one, or how far the Appellate Court's order may or may not affect the rights of parties who have not appealed. It seems to me to give a plain and clear rule that in all cases where there has been an appeal, the date of the final decision of the Appellate Court shall be the date from which the time for execution will begin to run. In support of the view I am taking, that in the present case limitation should run from the date of the Appellate Court's decree, I may refer to Mullick Ahmed

to cases without any exception to decrees from which an appeal has been lodged by any of the parties to it. (July 1886.)

Observations of Oldfield, J.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

Zumma v. Mahomed Syed,⁽¹⁾ and *Ram Lal v. Jagannath*.⁽²⁾

Though vendee of a portion alone appealed from a decree against him and mortgagor, time ran from the final decree even against mortgagee. (July 1883.)

(2-y) In *Basant Lal v. Najmunnissa Bibi*,⁽³⁾ the mortgagee of a certain property sued the mortgagor and the vendee of a part of the mortgaged property for the realization of a debt by sale; on the 24th September, 1878, the mortgagee obtained a decree against the mortgagor and for sale of property; the vendee appealed on the ground that the mortgage deed was not receivable in evidence and the appeal was allowed. The mortgagee in the second appeal obtained a decree on the 15th January, 1880, directing that a part of the mortgage money might be recovered by the sale of property, and applied for execution on the 14th September, 1882. It was held that time began to run from the date of the final decree.

A. H. Appellate Court's order in execution appeal directing division by lots treated as an order enforceable in reference to decree for division. (Dec. 1883.)

(2-z) In *Hulasi v. Maiku*,⁽⁴⁾ decree for partition was dated 19th January, 1878, and plaintiffs applied for execution on the 2nd February, 1878. Partition was effected and possession given on the 15th August, 1878, and petition struck off on the 13th September, 1878. The Appellate Court, on the decree-holder's appeal, reversed the Lower Court's orders and directed re-division by lots on the 18th September, 1878, and the Lower Court struck off the case on the 15th February, 1879, as the decree-holder failed to appear personally. On the 13th September, 1881, decree-holder's heir applied for re-division as per Appellate Court's order. The court doubting whether the 2nd clause of this Article would apply since the appeal there referred to is probably an appeal from the decree or order of which execution is being taken and not an appeal against an order in the course of execution of a decree or order, held, that however, the Appellate Court's

(1) I. L. R., 6 Cal., 194.

(2) Weekly Notes, 1884, p. 138.

(3) I. L. R., 6 All., 14.

(4) I. L. R., 5 All., 236.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

order of the 18th September, 1878, being in the nature of a decree and capable of execution, the application in question should be regarded as one for the execution of that order and was therefore within time.

(3-a) In *Dianat-ullah Beg v. Wajid Ali Shah*,⁽¹⁾ decree was obtained on the 8th September, 1880, and the judgment-debtor's appeal to the High Court was rejected on the ground that appeal memo. had been insufficiently stamped; the decree-holder applied for execution of decree on the 8th January, 1884; it was held that under such circumstances it cannot be considered that there was an appeal or a final decree or order on an (Appellate Court within the meaning of this Article, clause 2) application to the court to take a step in aid of execution within the meaning of this Article.

A. H. Court rejecting appeal memo. for being insufficiently stamped is not final decree or order of the Appellate Court within clause 2. (June 1884.)

(3-b) In *Rup Singh v. Mukhraj Singh*,⁽²⁾ an appeal from a decree dated the 8th July, 1879, was rejected by the High Court on the 11th June, 1880, in consequence of the failure of the appellants to pay additional Court Fees declared by the court to be leviable. On the 23rd December, 1882, an application was filed by the decree-holder for execution of the decree; it was held that the order rejecting the appeal was equivalent to a decree and that therefore the application made within three years from the date of that order was not barred by limitation. In *Gulab Rai v. Mangli Lal*,⁽³⁾ it was held that an order rejecting a memorandum of appeal as barred by limitation is a "decree" within the meaning of section 2 of the Civil Procedure Code, and that it is therefore appealable and not open to revision by the High Court under section 622 of the Code.

A. H. held that such dismissalal order was decree within clause 2. (July 1885.)

A. H. An order rejecting a memorandum of appeal as barred by limitation is a decree within section 2 of C. P. Code.

(3-c) In *Radha Prosad Singh v. Sundur Lal*,⁽⁴⁾ plaintiff applied for execution on the 28th September,

Decree-holder depositing two Rupees as cost for sale process is a step in aid of execution. (March 1883.)

(1) I. L. R., 6 All., 438.

(2) I. L. R., 7 All., 887.

(3) I. L. R., 7 All., 42.

(4) I. L. R., 9 Calc., 644.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

1877, and on the 8th July, 1878, deposited Rs. 2 as costs of bringing certain property to sale. Next application for execution was made on the 28th March, 1881. It was held that the deposit of Rs. 2 was a step in aid of execution.

Vakil's consent to postpone sale is a step in aid of execution. (Sept. 1894.) (Aug. 1879.)

(3-d) The decree-holder's Vakil's consent to the judgment-debtor's application to postpone the sale of some of the lands attached in execution of the decree is a sufficient fresh application, and it was not barred. *Verasami v. Athi.*⁽¹⁾ In *Issurree Dassee v. Abdool Khalak*,⁽²⁾ the nature of the second application is not stated in the report; the High Court have held that such an application was in substance one to continue the proceedings already instituted by the first application and that therefore the right to execute was not barred.

Application for sale proclamation is a step in aid of execution. (June 1894.)

(3-e) *Ambica Pershad Singh v. Surdhari Lal*,⁽³⁾ was a Full Bench case, in which it was held that the language of clause 4 of Article 179 of Act XV, clause 4 of Article 167 of the Act of 1871, is more comprehensive than that of 1877, and that an application to a court to issue the proclamation of sale in respect of property already attached in execution of a decree is an application to take some step in aid of execution.

Application for transmission of decree to another court is a step in aid of execution. (Dec. 1877.) (Dec. 1890.)

(3-f) In *Husain Bakhsh v. A. D. Madge*,⁽⁴⁾ it was held that an application under section 285 of Act VIII of 1859, praying for transmission of a copy of the decree together with a certificate of non-satisfaction to another court for execution was a necessary step towards the execution of the decree. In *Latchman Pundeh v. Maddan Mohun Shye*,⁽⁵⁾ such application was held to be a step in aid of execution.

Giving with an application stamps to transmit decree is a step in aid of execution. (Nov. 1883.)

(3-g) In *Dharanamma v. Subba*,⁽⁶⁾ when a decree-holder applied to the court to transmit the decree to another

(1) I. L. R., 7 Mad., 597.

(2) I. L. R., 4 Calc., 415.

(3) I. L. R., 10 Calc., 851.

(4) I. L. R., 1 All., 526.

(5) I. L. R., 6 Cal., 518.

(6) I. L. R., 7 Mad., 306.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

court for execution, and on a subsequent date paid into court postage stamps for transmission of records with an application to take some step in aid of execution; such application was held sufficient to give a new period of limitation. *Vellaya v. Jaganatha*.⁽¹⁾

(3-h) In *Ghansham v. Mukha*,⁽²⁾ application for execution was made on the 18th November, 1876. On the 14th December, 1876, one of the debtors put in a petition that with reference to an adjustment he paid decree-holder Rs. 10 and would pay the balance hereafter. The next application for execution was made on the 15th December, 1879, and the judgment-debtor pleaded that the decree was barred; it was held that the debtor's application is a step in aid of execution of the decree as provided by this Article.

Judgment debtor's application promising payment of debt is a step in aid of execution. (Nov. 1880.)

(3-i) In *Sitla Din v. Sheo Prasad*,⁽³⁾ application for execution was made on the 22nd November, 1875, and on the 27th March, 1876, on which date the attached property was to be sold, both parties made a joint application stating that the debtor had paid certain payment, and that the sale might be postponed for four months. The court granted the application. The next application for execution was made on the 17th January, 1879. It was held that the application was within time, as the proceedings of the 27th March, 1876, might be considered a step in aid of execution.

Joint application of creditor and debtor for postponement of sale held to be a step in aid of execution. (July 1881.)

(3-j) In *Tarini Das Bandyopadhyaya v. Bishtoo Lal Mukhopadaya*,⁽⁴⁾ application was made on the 11th March, 1885, for execution of a decree dated 25th March, 1880, and execution was barred unless the time could be counted from the 29th April, 1882, on which date the decree-holder in a tabular form applied to have entered payment of Rs. 100 by defendant, and prayed that the execution

Judgment-creditor's application to record payment made out of court is a step in aid of execution. (March 1886.)

(1) I. L. R., 7 Mad., 307.

(2) I. L. R., 3 All., 320.

(3) I. L. R., 4 All., 60.

(4) I. L. R., 12 Calc., 608.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

A. H. followed the above decision. (July 1896.)

case be struck off. It was held that this application was a step in aid of execution. Following the above decision the Allahabad High Court in *Muhammad Husain v. Ram Sarup*,⁽¹⁾ held that an application made by a decree-holder, the object of which is that the receipt of certain sums of money paid out of court may be certified is a step in aid of execution such as would keep the decree alive within this Article. In this case they referred to *Gransham v. Mukha*.⁽²⁾

Decree-holder's oral application to summon witnesses in the matter of claim to attached property is a step in aid of execution. (Feb. 1898.)

(3-k) In *Ali Muhammad Khan v. Gar Prasad*,⁽³⁾ decree-holder applied for execution on the 7th May, 1878; a third party claimed the property attached on the 15th July, 1878, and the decree-holder on the 26th August, 1878, applied orally for summons to his witnesses, and the claim was disallowed on the 20th December, 1878. On the 20th July, 1881, the decree-holder again applied for execution. It was held that the oral application of the 26th August, 1878, was one to take a step in aid of execution.

Decree-holder's application to set aside debtor's objection to confirmation of sale is a step in aid of execution. (April 1893)

(3-l) In *Kewal Ram v. Khadim Husain*,⁽⁴⁾ decree-holder applied for execution on the 10th August, 1878, and the debtor's property was sold on the 28th January, 1879; on the debtor moving for the cancellation of sale, the creditor, by a petition, objected to it on the 15th March, 1879, and prayed that the objection may be disallowed. The application was disallowed and the creditor applied for execution on the 10th February, 1882; it was held that the time should be computed from the application of the 15th March, 1879.

Application to execute attached decree is a step in aid of execution. (Feb. 1895.)

(3-m) In *Lachman v. Thondi Ram*,⁽⁵⁾ the decree passed on the 20th February, 1878, was sent in November, 1878, under section 323 of the C. P. C., to another Munsif, to whom, on the 21st January 1879, the decree-holder

(1) I. L. R. 9 All., 9.

(2) I. L. R., 3 All., 320.

(3) I. L. R., 5 All., 344.

(4) I. L. R., 5 All., 576.

(5) I. L. R., 7 All., 332.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

applied for execution, and attached with some immoveable property three decrees standing in that Munsif's Court in favour of the judgment-debtor against other persons. On the 18th March, 1882, the decree-holder applied to that Munsif to execute one of the three decrees and asked for payment of whatever might be realized on account of his decree. He made a subsequent application for execution on the 12th April, 1883. It was held that the application to execute an attached decree is a step in aid of execution of the original decree within the meaning of this Article.

(3-n) An application by a judgment-creditor to the court which passed the decree for a certificate that a copy of the Revenue register of the land is necessary to enable him to obtain such a copy from the Collector's Office and thereupon to execute the decree by attaching the land, is a step in aid of execution within the meaning of clause 4. *Kunhi v. Seshagiri*.⁽¹⁾ The C. H. in *Gunga Pershad Bhoomick v. Debi Sundari Dabea*,⁽²⁾ declined to recognize as a step in aid of execution, an application by a decree-holder's widow for the return of a copy of a decree for the purpose of an execution. They had done so probably because the widow had not then applied for substitution of her name on the record.

Decree-holder's application for a diary to obtain a copy of putta is a step in aid of execution under clause 4. (March 1883.)

C. H. declined to recognise as a step decree-holder's widow's application for the return of a copy of decree for execution. (Jany. 1886.)

(3-o) In *Ramhit Rai v. Satgur Rai*,⁽³⁾ first application for execution was made on the 28th May, 1875, and after attachment of property, the judgment-debtor on the 13th and 20th August, 1875, applied for postponement of sale stating that he had asked the decree-holder to allow him time to make some arrangement for paying off the debt. This petition was made by a vakil who had a special vakalut for the purpose. These two applications were held to be an acknowledgment of liability in

A. H. Full Bench held judgment-debtors' application for postponement of sale constituted an acknowledgment giving new period of limitation. (Sept. 1880.)

(1) I. L. R., 5 Mad., 142. | (2) I. L. R., 11 Calc., 227.

(3) I. L. R., 3 All., 247.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

respect of "right" within the meaning of section 19 of XV of 1877. It is beyond doubt that section 19, Act XV of 1877, applies to an application for execution of decree. This application therefore seems the decree-holder's second application for execution dated 29th July, 1878.

C. H. followed the above ruling.
(March 1883.)

(3-p) C. H. followed the above decision in *Ram Coomer Kur v. Jakur Ali*,⁽¹⁾ in which debtor's property was attached on the 3rd October, 1877, in execution of a decree dated 24th March, 1876. On the 7th December, 1877, the debtor's application for three months' time to raise money was granted. Decree-holder next applied for execution on the 4th December, 1880. It was held in March, 1882, that the debtor's petition constituted an acknowledgment giving the decree-holder a new period of limitation. Following the above decision C. H. in *Toree Mahomed v. Mahomed Mabood Bux*,⁽²⁾ held that a petition made by a judgment-debtor and signed by his vakil praying for additional time for payment of the decree amount is an acknowledgment of the liability which would give a new period of limitation from its date.

C. H.
(March 1883.)

P. C.
Application for postponement
occasions no
estoppel within
the Indian Evi-
dence Act sec-
tion 115.
(July 1883.)

(3-q) In *Mina Konwari v. Juggat Setani*,⁽³⁾ a decree obtained in 1867, under section 53 of Act XX of 1866, was first sought to be executed in July, 1870, and the order thereon dated August, 1870, had reference to the applicant's position as guardian, and the petition was struck off the file on the 29th August, 1870. In January, 1878, respondent's property was attached and proclaimed for sale in December, 1878, on which date the respondent applied by a petition for postponement of sale for two months: this was granted, and a further stay of one month was ordered by consent in February, 1880. Respondent, who, as mother of the original debtor had

(1) I. L. R., 8 Calc., 717. | (2) I. L. R., 9 Calc., 730.
(3) I. L. R., 10 Calc., 196.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

succeeded to the estate of her childless grandson, filed a petition before the expiration of the time that the sale was postponed alleging that the decree had been paid off. Sale was to take place on the 8th May, 1880, and the respondent on the 3rd of that month pleaded that the execution was barred by lapse of time. The High Court applying Act IX of 1871, rejected the application as barred. The Privy Council following their own ruling in *Mungul Pershad Dicheit v. Grija Kant Lahiri*,⁽¹⁾ that as regards suits instituted before the 1st of April, 1873, all applications in them are excluded from the operation of Act IX of 1871, held that the application was barred under section 22, Act XIV of 1859. As regards petitions for postponement of sales, their lordships observe that although the respondent denied any knowledge of the petitions presented in her name, and the appellant relied on them, no evidence was given that they were authorised by her. The petitions are of a spurious character. The proceeding in the Nuddiah Court against the respondent was altogether irregular if it was not without jurisdiction, and the petitions to postpone the sale cannot be treated as an estoppel. They contain no admission that the decree could be legally executed against the respondent, and are not within the description of an estoppel given in the Indian Evidence Act 1872, section 115 and the following sections.

C. H.
(June 1881.)

Observations of
P. C.

(3-r) *Paran Singh v. Jawahir Singh*,⁽²⁾ decree was dated 5th December, 1878, and first application for execution 6th March, 1880; notice was issued on the 17th December, 1880; on the 14th December, 1880, decree-holder applied for payment of sale proceeds of certain property that had been sold. The next application for execution was on the 8th May, 1883. It was held that the application for the sale proceeds on the 14th December, 1880, was a

Application for payment of sale proceeds is a step in aid of execution under clause 4.
(May 1884.)

(1) I. L. R., 8 Cal., 51.

(2) I. L. R., 6 All., 366.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

step in aid of execution under clause 4 of this Article.

M. H. also held so.

In *Venkatarayalu v. Narasimha*,⁽¹⁾ plaintiff obtained a decree against defendant on the 24th November, 1875, and on the 14th October, 1876, he got execution and sold some lands of the defendant. On the 9th February, 1877, he applied for and got payment of monies lodged by the purchaser. In the meantime an appeal was presented by the defendant and dismissed on the 28th March, 1877. Next application for execution was made on the 7th February, 1880. It was held that the application was within time, and further, that the plaintiff's application of the 9th February, 1877, for payment of sale proceeds is a step in aid of execution.

C. H. held such application is not a step in aid of execution. (August 1881.)

(3-8) In *Hem Chunder Chowdhry v. Brojo Soondury Debee*,⁽²⁾ a Division Bench (Morris and Tottenham) held in August, 1881, that an application made by a judgment-creditor to take out of court certain monies deposited by judgment-debtor cannot be considered to be an application to the court to take a step in aid of execution. They observe: "It seems to us, in spite of certain rulings of the Madras and Allahabad High Courts which have been quoted to the contrary, that we cannot treat such an application as one to take a step in aid of execution." Another Division Bench (Mitter and McLean) followed the above ruling, in *Fazal Imam v. Metta Singh*,⁽³⁾ in March, 1884, and as to the ruling of the Madras High Court in I L. R., 2 Madras, 174, they observe that it was given as an additional reason over and above the one on which the decision mainly rested. The question came before another Division Bench (Field and Beverley, J. J.) in January, 1885, in *Gunga Pershad Bhoomick v. Debi Sundari Dabee*,⁽⁴⁾ in which decree was dated June, 1879, and the decree-holder in 1879 attached the debtor's money in court and obtained

C. H. (March 1884.)

C. H. (Jany. 1885.)

(1) I. L. R., 2 Mad., 175.
(2) I. L. R., 8 Cal., 89.

(3) I. L. R., 10 Cal., 540.
(4) I. L. R., 11 Cal., 227.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

an order for payment, but died without receiving payment. Execution case was struck off on the 31st January, 1880. On the 14th June, 1880 and 22nd June, 1881, the creditor's widow applied for payment of money, and on the 1st April, 1882, applied to get back the copy of the decree for execution. At the time of these three applications she had not applied for substitution of her name on the record. On the 5th January, 1884, the widow applied to have her name substituted and for execution. It was held that the previous applications were not steps in aid of execution.

(3-t) In *Denonath Chuckerbutty v. Lallit Coomar Gangopadhyas*,⁽¹⁾ decree was dated 7th June, 1877. Purchaser of the decree had applied for execution on the 1st June, 1880. On the opposition of the judgment-creditor who had attached the decree for debt due by its original holder that the purchaser was a Benamidar, the purchaser withdrew his application on the 4th December, 1880, and on the 9th December, 1880, the creditor who had attached the decree applied for execution. It was held that his application was barred as the Benamidar's application is not one "in accordance with law" within the meaning of clause 4 of this Article.

Benamidar's application for execution is not a step in aid of execution. (August 1883.)

(3-u) In *Toree Mahomed v. Mahomed Mabood Bux*,⁽²⁾ the mere payment of a Court Fee in connection with execution proceedings with a view to obtain leave to bid for property then up for sale in execution of a decree does not constitute "the taking of some step in aid of execution" within the meaning of Article 179, schedule 2 of the Limitation Act (Act XV of 1877), so as to prevent the execution of the decree being barred within three years from the date of such payment.

C. H. Decree-holder paying a court fee to bid for property is not a step in aid of execution. (March 1883.)

(3-v) In *Fakir Muhammad v. Ghulam Husain*,⁽³⁾ a Division Bench held in January, 1878, that an application

A. H. Decree-holder's application for postponement of sale to enable him to make

(1) I. L. R., 9 Cal., 633. | (2) I. L. R., 9 Cal., 730.

(3) I. L. R., 1 All., 580.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

some arrangement with debtor is not a step in aid of execution. (Jany. 1878.)

A. H.
(April 1881.)

by a decree-holder for the stay of execution proceedings to enable him to make some arrangements with the judgment-debtor was not an application to enforce or keep in force the decree within the meaning of Article 167 of Act IX of 1871. Following the above decision, it was held in April, 1881, in *Mainath Kuari v. Debi Bakhsh Rai*,⁽¹⁾ that the application of August, 1876, by a decree-holder for postponement of sale on the ground that he had given time to the judgment-debtor was not a step in execution of decree, and that the limitation cannot be computed from the date of such application, and that it was an application made with the object of staying execution.

A. H.
Decree-holder's application praying for sale of property as one lot for two decrees is not a step in aid of execution. (Jany. 1881.)

(3-w) In *Khair-un-nissa v. Gauri Shankar*⁽²⁾ plaintiff obtaining two decrees, one against the defendant for money due on a bond executed by her deceased husband, and the other for money due by the defendant personally, applied on the 7th September, 1875, for execution thereof. On his application of the 16th February, 1877, that the land of the defendant's husband, but recorded in her name, should be sold as one lot for both the decrees; it was sold so and the decree-holder bought it on the 20th February, 1877, and certified satisfaction on the 10th December, 1877; subsequently the heirs of the defendant's deceased husband obtained decrees for such portion of the sale proceeds as had been appropriated to the discharge of the defendant's personal decree, which the decree-holder was obliged to pay. The decree-holder thereupon on the 16th May, 1879, applied for execution of his decree against the widow. It was held that such application was not one in continuation of that made on the 7th September, 1875, but was a fresh application, and the application made by the decree-holder on the 16th February, 1877, was not one for a step in aid of execution, within the meaning of

(1) I. L. R., 3 All., 757.

(2) I. L. R., 3 All., 484.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

No. 179, Act XV of 1877, from which limitation could be computed, and the application of the 16th May, 1879, was barred by limitation.

(3-x) In *Gurupadápá Basápá v. Virbhadrápá Irsan-gápá*,⁽¹⁾ the plaintiff in execution of his decree dated 1872, made his third application on the 10th March, 1879, merely asking that the decree might be kept alive, and on the 26th November, 1881, he sought execution of decree; the court held that the application was governed by the Act of 1877 and that inasmuch as the application of 1879 did not ask for any step to be taken towards execution, it was not in accordance with this Article and it did not save the application from being barred. The court further observe that this decision is not inconsistent with the rulings of the Privy Council in *Mangal Prasad's* case.

Asking merely to keep decree alive is no step towards execution.
(July 1883.)

(3-y) In *Kallu v. Muhammad Abdul*,⁽²⁾ the holder of a decree dated 13th February, 1880, died on the 11th February, 1883. Two days after his death, on the 13th February, 1883, his pleader applied for execution; the executing court admitted the application, but on the judgment-debtor's appeal, the District Judge ordered that the heirs might be allowed to carry on the execution on their making an application within two days from his order. On the 30th August, 1883, the heirs of the decree-holder applied for execution. It was held that the application was barred, as the application of the 13th February, 1883, was not such an application or a step in aid of execution as would prevent the Statute from running. No valid application can be made by a pleader after his client's death.

Application by pleader two days after decree-holder's death is not a step in aid of execution.
(March 1885.)

(3-z) In *Shib Lal v. Radha Kishen*,⁽³⁾ plaintiff obtained a decree on the 24th December, 1878, which exempted one of the defendants with his costs against

Defendant entitled to costs opposing plaintiff's mode of executing decree is no step

(1) I. L. R., 7 Bom., 459. | (2) I. L. R., 7 All., 564.

(3) I. L. R., 7 All., 898.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

in aid of execution and will not avail defendant as such.
(July 1886.)

him. In execution of that decree, plaintiff, on the 16th June, 1880, sought to set off against the decree amount due to himself, the costs awarded to the exempted defendant. On the 19th July, 1883, the exempted defendant applied for execution of the decree for costs. It was held that his application was barred as the objection which he offered was not a step in aid of execution.

Application to a conciliator under Act XVII of 1859 is not a step in aid of execution.
(October 1861.)

(4-a) In *Manohar v. Gebiapa*,⁽¹⁾ plaintiff's last application for execution dated 7th July, 1877, was not allowed as it had not been accompanied by a conciliator's certificate under the Dekkan Agriculturists' Relief Act XVII of 1879; the plaintiff applied for it on the 5th July, and obtained it on the 17th July, 1880, and revived his application to the court on the 23rd July, 1880, after the expiration of three years. It was held that a conciliator not being a court, the application made to him is not a step in aid of execution under this Article, and that the plaintiff was bound by law to have obtained a certificate before he went to the court, which could not entertain any application without it, and that the application of the 5th July, cannot be considered as one legally presented. In a later case the time occupied in obtaining a certificate was excluded in computing the period of limitation for a suit. *Durgaram Maniram v. Shripati*.⁽²⁾

C. H.
Application for execution of decree partially satisfied under private arrangement.
(June 1878.)

(4-b) In *Huronath Bhunjo v. Chunni Lal Ghose*,⁽³⁾ decree dated 18th July, 1864, was kept in force up to 1873, when the defendant, who was arrested in execution, was discharged on the arrangement that he should pay monthly Rs. 10 towards the liquidation of the decree. Execution Petition was struck off in September, 1873, and the judgment-debtor continued payment up to October, 1876. In June, 1877, decree-holder, without seeking to enforce by means of execution the arrangement made in

(1) I. L. R., 6 Bom., 31. | (2) I. L. R., 8 Bom., 411.
(3) I. L. R., 4 Calo., 877.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

1873, applied for execution of the decree of July, 1864, by arrest. It was held that the application was barred, more than three years having elapsed from the date of the last application for execution. In *Radha Kissore Bose v. Aftab Chundra Mahatab*,⁽¹⁾ an order was made by the court in February, 1868, in execution of a decree of June, 1865, directing the payment of the rents of certain property which had been attached, as they became due from the Mukuraridar to the judgment-debtors, to be made to the decree-holder to satisfy his decree; and in March, 1868, the execution case was struck off the file. Default having been made by the Mukuraridar in 1879, and the decree not having been fully satisfied, the decree-holder applied in April, 1880, for an order directing the payment of the rents which were in arrear to be made by the Mukuraridar in accordance with the previous order. It was held that as the application was not strictly one for fresh execution, limitation could not apply, and that as the effect of the order was virtually to appoint the decree-holder as receiver, his proper course was as such to sue the Mukuraridar. It has been observed that in the former case it was by private arrangement that the judgment-debtor agreed to satisfy the decree by monthly payments without any intervention of the court.

(4-C) In *Paras Ram v. Gardner*,⁽²⁾ the decree-holder had attached property which was released in August, 1871, on the claim of an objector against whom the decree-holder then instituted a suit to contest the order. He obtained a decree in August, 1872, and applied to the court in March, 1875, to have the same property brought to sale in execution of the first decree. It was held by a Full Bench that the renewed application to execute within three years from the date of the decree passed in the suit against the objector was not a fresh application

C. H.
Decree-holder to whom rents of property attached was ordered to be made as they become due may be treated as receiver, but his application to direct continuance of payment is not an application for execution. (March 1881.)

A. H. F. R.
Application to execute after disposal of suit against claimant is continuance of former proceedings. (Feb. 1877.)

(1) I. L. R., 7 Cal., 61.

(2) I. L. R., 1 All., 365.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

for execution against the judgment-debtor, but a continuance or revival of the previous application interrupted by the objector, and three years allowed by this Article should be reckoned from the date of the decree in the suit against the objector when as against him the decree-holder's right was restored to him.

Application for execution after removal of objection in a claimant's suit is revival of former proceedings.

(4-d) On the day fixed for sale of certain property with reference to the decree-holder's application dated 27th May, 1878, court stayed execution by an injunction pending the disposal of a suit instituted by certain persons claiming a portion of the property attached; the suit was decided on the 24th January, 1881; on the 4th September, 1882, the decree-holder applied for execution and asked to attach and sell some property not included in his previous application. The court held that there was no objection to his doing so since the decree must be held to be in force, and that the application must be considered to be for revival of the former proceedings after the removal of the injunction, and that Article 178 rather than this Article applied to the case. *Basant Lal v. Batul Bibi*.⁽¹⁾

Article 178 rather than 179 applied to the case.
(July 1883.)

Application for execution after dismissal of decree-holder's suit to hold attached property liable must be revival of previous proceedings if made after time.
(Feb. 1883.)

(4-e) In *Krishnaji Raghunath Kothavle v. Anandrav Ballal Kolhalkar*,⁽²⁾ decree-holder, in 1874, attached certain real property of his judgment-debtor and the attachment was released on the 16th July, 1875; at the instance of a claimant the decree-holder within time brought a suit for a declaration that the property was liable to attachment, and it was rejected on the 8th July, 1880. On the 30th November, 1880, the decree-holder applied for the arrest of the judgment-debtor. It was held that the execution process last applied for was distinct in its nature from, and in no way a continuance or revival of the previous proceedings in execution, and was therefore made too late, more than three years having elapsed since the passing of the decree.

(1) I. L. B. 6 All., 23. | (2) I. L. R., 7 Bom., 299.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

(4-f) In *Ramsouder Sandyal v. Gopessur Mostofee*,⁽¹⁾ plaintiff in January, 1869, first applied for execution of his decree dated August, 1864. In November, 1870, he applied for the sale of his debtor's interest in a decree on certain lands, but they were released on the claim of third parties. The decree-holder sued in December, 1871, and obtained a decree in April, 1872, declaring his right to sell the properties. The High Court confirmed the decree in 1874. Before the final order, the decree-holder made a third application in September, 1873, asking for a certificate to a District Munsif to execute the decree against some other property of the judgment-debtor. If the application of November, 1870, is not one to keep the decree in force within the meaning of Article 167 of Act IX of 1871, the decree would be barred, as the last application of September, 1873, was not to revive and continue the proceedings instituted on the application of January, 1869. It was held that the application of November, 1870, did not keep the decree in force within the meaning of Article 167 of Act IX of 1871, and that the last application was not one to revive the proceedings instituted on the application of January, 1869, and stayed up to July, 1873, by reason of the creditor having been forced to sue to remove the claims of third parties. In holding so, the court followed the ruling in *Chunder Coomar Roy v. Bhogobutty Prosonno Roy*,⁽²⁾ in which it was ruled that the words "applying to enforce the decree" in Article 167, mean the application by which execution proceedings, are commenced, and not applications of an incidental kind made during the pendency of such proceedings, though an application simply "to keep the decree in force" would give another three years from its date in cases governed by Act IX of 1871.

C. H.
Application after successful termination of decree-holder's suit against claimant, for attachment of some other property, held not to revive former proceedings and therefore barred. (March 1878.)

C. H.
(Sept. 1877.)

(1) I. L. R., 3 Cal., 716. | (2) I. L. R., 3 Cal., 235.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

Application for execution after cancellation of sale and refund of purchase money should be of the same kind as the first to bar the Statute.
(Sept. 1864.)

A. H.
(Jan. 1881.)

Application after disposal of objector's suit, in which execution was suspended by injunction, is revival of former proceedings.
(July 1883.)

Application for execution made in 1883, was held as one not

(4-g) On the 16th September, 1879, a decree-holder in execution of his decree applied for attachment and sale of certain lands, and on the 8th January, 1880, the sale was confirmed. The purchaser having learnt that the defendant had no title to the land, brought a suit and obtained a decree cancelling the sale on the 2nd April, 1881, and on the 2nd November, 1881, obtained an order for the refund of purchase-money, which was thereupon paid to him by the decree-holder. On the 2nd March, 1883, the decree-holder applied for execution by arresting the defendant. A Division Bench (Turner, C. J. and Brandt, J.,) being of opinion that the subsequent application cannot be regarded as a continuance of the former proceeding inasmuch as it was for arrest, held it was a fresh application; and following the decision in *Khair-un-nissa v. Gauri Shankar*,⁽¹⁾ the court rejected the application as barred. *Virasami v. Athi*.⁽²⁾

(4-h) In *Basant Lal v. Batul Bibi*,⁽³⁾ on the 28th May, 1876, application was made for execution of a decree in pursuance of which certain property was attached and proclaimed for sale. On the day fixed for sale, the court issued an injunction to stay the same until a suit which certain persons who claimed the property had instituted, had been decided. On the 14th September, 1882, the suit having been fully decided on the 24th January, 1881, the decree-holder applied for execution. It was held that the application might properly be considered to be for revival of the former proceedings after removal of the injunction to which Article 178 of the Limitation Act 1877, rather than Article 179 was applicable, and was within time from the date of accrual of the right to apply on the final decision of the suit.

(4-i) In *Chatur Kushal Chand v. Mahadu Bhagaji*,⁽⁴⁾

(1) I. L. R., 3 All., 484.

(2) I. L. R., 7 Mad., 595.

(3) I. L. R., 6 All., 23.

(4) I. L. R., 10 Bom., 91.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

a conciliation agreement dated the 2nd October, 1880, between the decree-holder and the judgment-debtor stipulating that the former should allow a remission of Rs. 10 and the latter should execute a document for the remaining sum of Rs. 90 to be paid in 1882, was filed in court on 20th November, 1880. In 1883, the decree-holder presented two applications for satisfaction of the agreed debt of Rs. 90 by attachment of the debtor's property, which applications were granted, but were not proceeded with through some default of the decree-holder. On 4th June, 1885, the decree-holder made the present application, praying that, under sections 261 and 262 of the Civil Procedure Code (Act XIV of 1882) an order directing the judgment-debtor to execute a bond in terms of the conciliation agreement might be made, or that the court might execute one on his behalf. On reference by the Subordinate Judge under section 617 of the Civil Procedure Code, (Act XIV of 1882) to the High Court, it was held, that the applications in 1883, for attachment of the debtor's property, were not "in accordance with law," being forbidden by the Deccan Relief Act XVII of 1879, section 22, and that the present application under section 261 of the Civil Procedure Code (Act XIV of 1882) was, therefore, too late under clause 4 of this Article.

"in accordance with law," being forbidden by Deccan Agriculturalists' Relief Act.

(4-j) In *Raja Ram v. Tolasi Ammal* (not reported) the holder of a decree entitling her to receive annual maintenance applied for execution, and her application was rejected as barred, more than three years having elapsed from the date of the prior application. The Division Bench (Turner, J. and Kindersley, J.) while holding that the decree became barred, observed: "It is obvious in the Act of 1871, those decrees were lost sight of in which the right to execute does not wholly arise immediately, but in part from time to time and in the present Act the same difficulty will be experienced unless

Decree for annual maintenance not providing for payment on specific dates held barred after three years.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

Difficulty will be experienced unless courts are careful in framing decrees to declare specific dates for payment.

M. H.
(July 1883.)

the courts are careful in framing their decrees to declare specified dates on which payments are to be made and not merely to declare generally that payments are to be made annually. It would be inopportune for the court to express, as we are invited to do by the respondent's pleader, an opinion whether the respondent is entitled to treat the decree she has obtained as declaratory and to commence a fresh suit on each default in payment of maintenance. All we have now to decide is that she cannot execute the decree she has obtained by reason that it has become barred by limitation." In *Yusuf v. Sirdar*,⁽¹⁾ decree obtained by plaintiff directed annual payments to be made, and the decreeholder applied for and obtained payment of the money due for 1877 and 1878, in March, 1879, by execution, and then applied in July, 1882, for the sums due for 1880 and 1881. It was held that the application was barred by limitation, and that the decree which directs payment to be made annually to a decree-holder is not a decree which directs payment of money to be made at a certain date within the meaning of this clause or section 230 of the Code of Civil Procedure.

Right declared by such decree may be enforced by a suit.
(July 1883.)

(4-k) When the same question arose in *Sabhanatha v. Lakshmi*,⁽²⁾ in which decree for maintenance was dated 1874, and no application for execution had been made after March, 1875, up to July, 1882, a Division Bench (Turner, C. J. and Muthoosawmi Iyer, J.,) held in July, 1883, that the decree was barred, and observed: "As the decree stands, it is a declaratory decree." But the lady can, if need be, sue for the enforcement of the right which has been declared.

Maintenance decree decreeing possession in default of three instalments has three years from the

(4-l) In *Ugrah Nath v. Laganmani*,⁽³⁾ decree dated 24th September, 1867, provided for payment of plaintiff's maintenance throughout her life in three instalments

(1) I. L. R., 7 Mad., 83. | (2) I. L. R., 7 Mad., 80.

(3) I. L. R., 4 All., 83.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

yearly and for delivery of property in case of default of three such instalments. The first default occurred on the 18th January, 1874. But the decree-holder waived the benefit of the provision. A fresh default was made, and on the 23rd January, 1880, the decree-holder applied for possession. It was held that the decree was capable of execution on the 18th January, 1874, and that the application of the 23rd January, 1880, was barred.

date of first default.
(July 1881.)

(4-m) In *Anandray Chimuji Avati v. Thakarchand*,⁽¹⁾ several decree-holders applied on the 1st June, 1880, for execution of their decrees. They had taken out execution several times previously, the date of their last preceding application being 1st June, 1877. The Lower Court was of opinion that the applications were barred under the last clause of section 230 of the Civil Procedure Code, Act X of 1877. It was held that the applications were not barred inasmuch as the previous applications for execution had not been made under section 230 of Act X of 1877, that Act not being then in force; Westropp, C. J., observes, that section 230 is not by any means easy of construction.

B. H. held section 230 of C. P. C. of 1877 does not bar execution when previous application had not been made under it.
(Sept. 1880.)

(4-n) In *Annaji Apaaji v. Ramji Jivaji*,⁽²⁾ the plaintiff obtained against the defendant a decree on the 15th February, 1872, for possession upon his mortgage, and in attempting to take possession was obstructed by another mortgagee of the defendant, whereupon the plaintiff applied for removal of the obstruction, but his application was rejected on the ground that the second mortgagee was in possession, and that the plaintiff was not entitled to possession until the second mortgage was redeemed. The plaintiff did not apply for execution any further. In 1884, the defendant paid off the second mortgagee, and on 27th August, 1885, the plaintiff presented an application for execution of his decree of 1872. It was held

Section 230 of Act XIV of 1882 applies only when previous application had been made under it.
(Feb. 1886.)

(1) I. L. R., 5 Bom., 245. | (2) I. L. R., 10 Bom., 348.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

that the execution of the decree was barred, no application for execution having been made since 1873, and that this Article (179) governed the case, the previous application not having been made under section 230 of the Civil Procedure Code.

M. H.
Bar under section 230 cannot be pleaded after sale and purchaser has acquired rights under the sale, Act X of 1877. (August 1882.)

(4-o) In *Gangathara v. Rathabai*,⁽¹⁾ judgment-debtor after sale of his land, but before its confirmation under section 312 of the C. P. C., objected to the execution of the decree on the ground that the decree was barred under section 230. The court, while holding that the objection was taken when too late, observe: "We are of opinion that the exception of limitation should have been taken before the sale. The rights of the purchaser, who is not a party to these proceedings, are involved in the sale, and would be affected by its cancelment. If the court had omitted to serve the preliminary notice of execution after one year from the date of the decree, that might possibly have affected the jurisdiction, and might have vitiated all subsequent proceedings. But in this case the court had jurisdiction unless the decree was barred; the exception was not taken, and it appears to have been overlooked by the court. We think it too late to take the plea after the purchaser has acquired rights under the sale."

Application to be affected by twelve years' rule, the previous one should have been granted within the meaning of clause 3 of sec. 230 of Act X of 1877. Decree dated 1862.

(4-p) In *Chengaya v. Appasami*,⁽²⁾ an application to execute a decree of 1862, was made under section 230 of C. P. C. on the 14th December, 1877 and a notice was issued to the judgment-debtor under section 248, and as no further steps were taken it was rejected. A subsequent application made within three years from the 14th December, 1877, was rejected by the Lower Appellate Court on the ground that when that application was made, more than twelve years had elapsed from the date of the decree, and more than three years from the date

(1) I. L. R., 6 Mad., 237. | (2) I. L. R., 6 Mad., 172.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

that C. P. C. began to operate. The High Court held in August, 1882: "It appears to us, that the application on the 14th December, 1877, though an application under the section in the sense of the 3rd clause of section 230, was not an application which was granted within the meaning of that clause. It was simply an application on which a notice was issued under section 248; the application cannot be brought therefore within the twelve years' rule of section 230, and as his last application was presented on the 10th December, 1880, (not as the District Judge says, 18th December) it was within three years from the last preceding application and is in time."

(4-q) In *Sohan Lal v. Karim Bakhsh*,⁽¹⁾ assignee of the decree dated March, 1872, applied for execution of the decree in February, 1878. The previous application dated December, 1877, made under section 230, had been rejected for the decree-holder's failure to deposit batta for the service of notice required by section 248 of the C. P. C. The Lower Court rejected the application as barred. It was held that the concluding clause of section 230 referred to the question of limitation and not that of diligence, and that the application was barred as the previous application had been made under section 230.

A. H. rejected as barred by section 230 execution application of Feb. 1878 because the previous application had been rejected under the section. Decree was dated March, 1872.

(4-r) In *Bhawani Das v. Daulat Ram*,⁽²⁾ a decree dated 1863 was allowed to be executed on an application dated 4th March, 1880, under section 230 of Act XIV of 1882, which was passed on the 17th March, 1882, and came into force on the 1st June, 1882; another application for execution was made on the 3rd March, 1883. The question for decision was whether section 230 of Act XIV of 1882 revived the decree which had been barred before it began to operate. It was held that the decree was once allowed the benefit of three years' grace under the last paragraph of section 230 of the Code of 1877,

Section 230 of the C. P. C. of 1882 does not revive decree barred by 230 of X of 1877. (May 1884.)

(1) I. L. R., 2 All., 281.

(2) I. L. R., 6 All., 389.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

and then became dead or unexecutable, and that if there is nothing in section 230 of the Code which positively prohibits the execution of such decrees, there is nothing from which to conclude that was intended to revive decrees which had become dead before the Code of 1882 became law.

F. B.
Section 330 of
XIV of 1882
prolongs the
life of a decree
which was
alive when the
Code was pas-
sed.

(4-s) The above case was distinguished from *Musharraf Begam v. Ghalib Ali*,⁽¹⁾ in which an application for execution of a decree dated 30th November, 1870, was made under section 230 of Act XIV of 1882; this was a Full Bench case, and a majority of three Judges, Stuart, C. J. and Oldfield, J., dissenting, held, following *Sreenath Goocho v. Yasoof Khan*,⁽²⁾ that the application might be granted, it being the first made under section 230 of Act XIV of 1882, and the first made after the expiration of twelve years from the date of the decree, and not being barred by the last paragraph of section 230 of that Act read in conjunction with the third paragraph of section 230 of Act X of 1877, the law in force mentioned in the last paragraph of section 230 of Act XIV of 1882 referring to the Law of Limitation in force at the time the Act was passed and not to the third paragraph of section 230 of Act X of 1877. The above ruling was followed in *Jokhu Ram v. Ram Din*,⁽³⁾ in which the holder of a decree dated June, 1872, applied for its execution in February, 1885, the previous application having been made in November, 1883. It was held that the application was not barred under section 230 of the Civil Procedure Code.

C. H.
Dissented from
the above F. B.
ruling.
(Jan. 1886.)

(4-t) In *Goluck Chandra Mytee v. Harapriah Debi*,⁽⁴⁾ decree-holder applied on the 10th November, 1884, for the execution of a money decree dated 5th July, 1872. The Lower Court, on the authority of the above Full Bench

(1) I. L. R., 6 All., 189.

(2) I. L. R., 7 Calc., 556.

(3) I. L. R., 8 All., 419.

(4) I. L. R., 12 Calc., 559.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

ruling of the Allahabad High Court, allowed the application. Dissenting from the above Full Bench ruling, it was held that the words "the law in force immediately before the passing of this Code" refer to and include Act X of 1877, as amended by Act XII of 1879, and that as the application was not made within the period prescribed by section 230, it was barred.

(4-u) In *Sreenath Goocho v. Yusoof Khan*,⁽¹⁾ execution of a decree dated February, 1865, of more than twelve years before Act X of 1877, was applied for on the 20th September, 1880, and certain properties named in the schedule was attached on the 12th November, 1880; the decree-holder put in another application praying for the release of the properties attached conformably to the first and requesting that certain other properties named in the second application be attached. It was contended that the second application might be accepted as an application amending and supplementary to the original application of the 20th September. It was held that the execution of the decree was barred by limitation, and that if the supplementary list of property was allowed to be put in after the expiration of twelve years, the essential portion of the law would be practically defeated.

Execution of decree of more than twelve years can be allowed but once; second application naming new properties and releasing property already attached is a fresh application. (July 1881.)

(4-v) A judgment-debtor who, though able to pay his judgment-debt, dishonestly evades payment for more than twelve years by excluding service of warrants by taking refuge on each occasion that a warrant was issued in some other district, and making applications to the court which had the effect of staying execution for the time, is guilty of fraud within the meaning of section 230 of Criminal Procedure Code, and is not entitled to take advantage of the delay which he fraudulently caused. It was held that to give full effect to the penultimate paragraph of section

Judgment-debtor dishonestly causing delay not to take advantage of section 230 of C. P. C. (April 1883.)

(1) I. L. R., 7 Calc., 556.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

230, it is necessary to interpret the word fraud in a wider sense than that in which it is used in English Law. *Annamalai v. Rungasamy*,⁽¹⁾

Case where section 230 of C. P. C., held not to apply. (October 1881.)

(4-W) In *Visalatchi Ammall v. Sivasankara Taker*⁽²⁾ plaintiff obtained a decree in 1867, in a Small Cause suit, against his debtor since deceased; the decree was kept alive till the 13th December, 1876, when the decree-holder brought a suit to set aside certain alienations made by the judgment-debtor fictitiously and fraudulently. Having succeeded in the suit, the decree-holder again applied for execution in 1879, but not against the property fictitiously alienated. He lastly applied on the 28th September, 1880, more than twelve years after decree, for execution against certain immoveable property of the debtor other than the property fictitiously alienated in the debtor's widow's possession. It was held that as the obstacle to execution lay in the antecedent fraud which had operated to create a fictitious transfer of the property from the judgment-debtor, the decree-holder was not barred in respect of the last application, and that the question is not affected by the fact of the application being made in respect of property other than that comprised in the suit brought by the decree-holder to hold it available.

Section 230 does not render invalid an order passed after twelve years granting application made before twelve years expired. (April 1883.)

(4-X) In *Virarama v. Annasami*,⁽³⁾ decree-holder applies for the sale of the hypothecated property in March, 1881, in execution of a decree dated March, 1870. In July, 1881, an order was made for sale. In September, 1881, the decree-holder applied for postponement of sale up to August, 1882, but before an order was passed he withdrew the petition on the 7th September, and on the 18th, fresh proclamation of sale was issued. On the 19th September, at the instance of the defendant, and with the consent of the decree-holder, the sale was postponed to

(1) I. L. R., 6 Mad., 365. | (2) I. L. R., 4 Mad., 155.

(3) I. L. R., 6 Mad., 359.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

the 20th January, 1882. The parties produced before the Judge on the 30th September an agreement entered into by them for the satisfaction of the decree and other debts, and the agreement was returned in February, 1882. When the decree-holder applied for sale in pursuance of the agreement, the defendant objected to its enforcement, and the Judge, on the 31st of March, 1882, admitted the objection and ordered execution of the decree independently of the agreement. The defendant contended that the court had no power to issue order for sale after the expiry of twelve years from the date of the decree. It was held that the terms of sections 230 do not render invalid an order passed after twelve years from the date of the decree, granting an application for execution made before the twelve years' term had expired. Turner, C. J., observes: It is no doubt true that the position of the words "shall be granted" lends support to the arguments that delay on the part of the court which may or may not be available, may deprive a decree-holder of the benefit of his decree without any fault on his part. It appears to us, however, that the terms of the law do admit of an interpretation which obviates the necessity of our regarding them as imposing a novel and unreasonable prohibition. It is probable that if the draftsman had not so arranged the clause that two paragraphs (one of them somewhat lengthy) are necessary to define the periods from which limitation was to run, the word "shall be granted" would have been found in another place. There can be little doubt the limitation was intended to apply to the application and not to the order passed thereon, and that the words prescribing the limitation are to be referred to the words "application to execute the decree" and not the word 'granted'."

Turner, C. J., observes on the position of the words "shall be granted" in section 230.

(4-y) The holder of a decree dated January, 1869, entered into a compromise with the judgment-debtor in

Condition in a compromise that in default

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

of certain number of instalments the decree should be executed in full cannot prevent limitation. (Jan. 1877.)

August, 1869, agreeing to accept payment by instalments which the court ratified, and struck off the execution case. In February, 1873, the decree-holder applied for and obtained in April, 1873, a certificate under section 285 of Act VIII of 1859. No proceedings were taken, as judgment-debtor resumed payment of instalments to the decree-holder direct. The compromise having acknowledged the decree-holder's right to execute the decree if any two consecutive instalments were not paid, the decree-holder in January, 1876, applied for execution. It was held that such subsequent proceedings when execution of the original decree had been already barred could not avail to keep the decree alive. *Stowell v. Billings*.⁽¹⁾

A. H. held that application being within three years from the dates that 9th & 10th instalments of decree became due was within time under Article 167 of Act IX of 1871. (April 1879.)

(4-g) In *Kanchan Singh v. Sheo Prasad*,⁽²⁾ a decree for the payment of money by instalments directed that, if the judgment-debtor failed to pay two instalments in succession, the decree-holder should be entitled to enforce payment of the whole amount due under the decree. The decree-holder, alleging that a portion of the ninth instalment was payable and that the whole of the tenth (the last) instalment was due, applied to enforce payment of the monies due under the decree. It was held *per* Pearson, J., that whether former instalments had been paid or not was immaterial, and the application being within three years from the date on which the ninth and tenth instalments became due, was, with reference to Article 167, schedule 2 of Act IX of 1871, within time.

A. H. held decree allowing payment of all instalments in default of one should be executed in one lump. (Sept. 1879.)

(5-a) In *Shib Dat v. Kalka Prasad*,⁽³⁾ the decree provided for payment of money by instalments, with a proviso, that in the event of default decree should be executed for the whole amount; it was held that the decree-holder was bound strictly under the wording of

(1) I. L. R., 1 All., 350.

(2) I. L. R., 2 All., 291.

(3) I. L. R., 2 All., 443.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

the decree to execute it in one lump when the first default occurred, and that his failure to have applied for execution within three years from the date of first default barred the decree.

(5-b) In *Asmatullah Dalal v. Kally Churn Mitter*,⁽¹⁾ decree dated 12th June, 1875, provided for payment of debt by monthly instalments, and for the realization of the entire debt by execution on failure to pay any three successive instalments. The 1st instalment was due in July, 1875, and the last in October, 1877. Default was made in payment of the first three instalments. But the decree-holder without applying for execution, accepted subsequent payment. On the 13th of December, 1879, he applied for execution for the amount then due. It was held that the period of limitation began to run on the 3rd default taking place and that no subsequent payment could stop limitation once begun, and that the decree holder was still entitled to the benefit of clause 6 of this Article, as respects any instalments ordered in the decree, and which fell due on dates not exceeding three years before the application was filed. The court observed, under the decree the decree-holder had several courses open to him, subject, of course, to the rules of limitation. He could have, upon the occurrence of the defaults, forthwith taken out execution of the whole decree, or he could have executed for each instalment severally within three years after it became due, or he might have contented himself with accepting whatever was paid from time to time, and then applied for execution of the decree for the outstanding balance, taking care to do so before the expiry of three years from the date of the decree or from the date of the 3rd default if he thought the terms of the decree altered the period of limitation. The above

C. H.
Instalment decree providing for recovery of entire amount in default of any three successive instalments, does not bar the instalments due for three years preceding the application for execution.
(March 1881.)

C. H.
(March 1883.)

(1) I. L. R., 7 Calc., 56.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

ruling was followed in *Nilmadhub Chuckerbutty v. Ramsodoy Ghose*.⁽¹⁾

C. H.
Such decree
held as barred
when execution
not applied for
within three
years from first
default.

(5-c) In *Judhistir Patro v. Nobin Chandra Khela*,⁽²⁾ the decree passed in accordance with a compromise directed payment by instalments, and provided that in default of payment of any one instalment, the agreement for payment by instalments should come to an end, and that the whole sum should become payable. The decree-holder who applied for execution stated that the judgment-debtor had paid the first instalment, but had made default of the remaining instalments, and prayed for execution for the amount due with interest from the due date of the second instalment. The judgment-debtor denying payment of the first instalment, pleaded limitation. The Lower Court allowed the application on the authority of *Nilmadhub Chuckerbutty v. Ramsodoy Ghose*,⁽³⁾ though it found as a fact that the judgment-debtor had not paid any of the instalments. It was held that the question whether a decree-holder may waive the benefit of the provision in an instalment decree for the whole sum becoming due on failure of any one instalment or must execute his decree within three years from the due date of the first instalment of which default is made in payment, is a question purely of construction to be decided on the terms of the whole decree in each case, and that in this case the application was barred as the judgment-creditor had not applied for execution within three years from the date of the first default. The court observed that upon the terms of the decree, the decree-holder had no option to waive his right to execute for the whole amount, and having neglected to take advantage of the privilege given him in the decree, he was too late to realize anything.

The question
whether a
decree-holder
may waive the
benefit of the
provision in an
instalment de-
cree is a ques-
tion purely of
construction to
be decided on
the terms of the
decree.

Decree-holder
entitled to lar-
ger sum in case
of default of any
one instalment

(5-d) In *Radha Prasad Singh v. Bhagwan Rai*,⁽⁴⁾

(1) I. L. R., 9 Calc., 857.

(2) I. L. R., 13 Calc., 73.

(3) I. L. R., 9 Calc., 857.

(4) I. L. R., 5 All., 289.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

decree dated 30th May, 1867, provided for payment of a larger sum in default of any one of the instalments. Decree-holder had been paid though not regularly in full, all the instalments previous to September, 1876, for which month he had received only a part. His application of 7th May, 1877, for execution for the larger amount was struck off the file, and he had subsequently accepted the remaining instalments regularly. On the 28th August, 1878, he had applied for payment of instalment paid into court. On the 8th September, 1881, he applied for execution for the larger amount payable under the decree with reference to the default in September, 1876. The court refusing to grant the application, held that the acceptance by the decree-holder of the instalments falling due after September, 1876, amounted to a waiver of his right to execute the decree for the larger amount, and that by such waiver he was estopped from recovering such larger amount. Straight, J., observes that the application of the 28th August, 1878, was not a step in aid of execution of the decree in the shape in which he had previously sought execution, and that the present application was therefore barred.

waives his right by accepting instalments after default, and is estopped from recovering the larger amount.
(Jan. 1889.)

(5-9) In *Dulsook Rattanchand v. Chugon Narrun*,⁽¹⁾ decree of 14th June, 1873, for Rs. 123, directed payment by yearly instalment of Rs. 28, with a proviso that in case of default made in the payment of any one instalment, the whole amount should become payable at once.

B. H. held instalment decree providing for payment of the whole in default of one instalment is not kept alive by acceptance of subsequent payment.

The 1st instalment which fell due on the 14th June, 1874, was not paid. 2nd instalment was paid into court on the 2nd April, 1875, and the 3rd instalment on the 13th March, 1876; the plaintiff applied on the 27th June, 1877, for execution of the whole decree and the question was whether the right to such execution was barred. Westropp, C. J., holding that it is barred, observes: "We think that

(1) I. L. R., 2 Bom., 356.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

The provision in Article 75 as to instalment bond is not to be found in 179 of the Act of 1877, or 167 of the Act of 1871.

“the whole amount decreed became due on the first default
 “in payment of the instalments, *viz.*, on the 14th June,
 “1874, so that three years and nine days had elapsed
 “when the plaintiff made his present application for
 “execution. The Full Bench case of Gumna Dambershet
 “*v. Bhiku Hariba*,⁽¹⁾ was decided upon the Limitation
 “Act XIV of 1859. The principles, however, on which
 “that case was decided apply in this case. There is not
 “in the last clause of Article 167 of schedule 2 of Act
 “IX of 1871, which clause relates to decrees payable
 “by instalments, any provision similar to that in Article
 “75 of the same schedule with respect to promissory
 “notes or bonds payable by instalments, where such
 “notes or bonds provide that if default be made in pay-
 “ment of one instalment, the whole shall be due, fixing
 “that the period of limitation shall begin to run from
 “the time of the first default, unless where the obligee
 “waives the benefit of the provision, and then when fresh
 “default is made. Nor does there appear to be in the
 “new Limitation Act XV of 1877, schedule 2, Article 179,
 “clause 6, relating to decrees payable by instalments any
 “such provision.”

M. H. held application for execution to recover 5th instalment not barred though creditor waived to recover the whole amount under decree.
 (Aug. 1881.)

(5-f) In *Appayya v. Papayya*,⁽²⁾ a decree was passed by consent in 1872, for payment to plaintiff through the court of Rs. 300, by fifteen annual instalments, on February 20th in each year, and in default of payment of any instalment the whole amount became recoverable, and four years' instalments were paid out of court and default made on February 20, 1877, and plaintiff applied to recover the instalment of 1877 by execution in November, 1879, and March, 1880. It was held that the application of November 1879, was not barred under clause B, Article 179, inasmuch as when the Indian Limitation Act 1877, came into force, (October 1, 1877), the application

(1) I. L. R., 1 Bom., 125. | (2) I. L. R., 3 Mad., 256.

Description of application.	Period of limitation.	Time from which period begins to run.
	Three years.	

was not barred under clause 6, Article 167, schedule 2 of the Indian Limitation Act, 1871, and that the provision as to the whole amount becoming recoverable at once if default was made did not affect the admissibility of the application for execution, because that provision had not been enforced and the obligation to pay by instalments was still subsisting.

180.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.	Twelve years.	When a present right to enforce the judgment decree or order accrues to some person capable of releasing the right: Provided that when the judgment, de-
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cree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent; the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.

(a) The Code of Civil Procedure now here speaks of a decree being revived. White, J., in *Ashootosh Dutt v. Doorga Churn Chatterjee*,⁽¹⁾ has shown that the notice to show cause, which the Code requires after one year, has precisely the same effect of reviving a judgment which the old writ of *Seire facias* had. Section 230 of the Code of Civil Procedure does not affect the period of limitation prescribed by this Article. Article 179 expressly refers both to Article 180 and to section 230 of the Civil Procedure

Giving notice after one year has the effect of reviving judgment on the Original Side of the High Court. Section 230 of the C.P.C., does not affect the limitation prescribed by this Article. (Dec. 1890.)

(1) I. L. R., 6 Calc., 504.

Description of application.	Period of limitation.	Time from which period begins to run.
	Twelve years.	

Code; but this Article is absolute and contains no reference to section 230. Such a reference might have been expected if this Article also was intended to be in any way controlled by that section. *Ganapathi v. Balasundara*.⁽¹⁾ The above decision was followed by the Bombay High Court in *Mayabhai Prembhai v. Tribhuvandas Jagjivandas*.⁽²⁾

Application to enforce an order of P. C. falls under this Article, (Jan. 1883.)

(b) In *Luchman Persad Singh v. Kishun Pershad Singh*,⁽³⁾ it was held that although an order of the Privy Council is the paramount decision in the suit, and any application to enforce it is, in point of law, an application to execute the order and not the decree which it confirmed, such applications are governed by this Article.

(1) I. L. R., 7 Mad., 540. | (2) I. L. R., 6 Bom., 258.

(3) I. L. R., 8 Calo., 218.

ACT No. IX OF 1871.

ACT No. XV OF 1877.

THE INDIAN LIMITATION ACT, 1877.

Description

IX OF 1871.

C. ~~THE~~ COUNCIL OF INDIA. RECEIVED THE
 expect ~~THE~~ ~~FEDERAL~~ ON THE 24TH MARCH, 1871.

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darn

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Jag.

~~THE~~ Limitation of Suits and for
~~THE~~ purposes.

Application to
 enforce an order
 of P. C. falls
 under this Arti-
 cle.
 (Jan. 1883.)

(b)

Sing

Comm.

applic

tion to

confir

(1)

to ~~consolidate~~ consolidate and amend the law relating
~~to~~ appeals and certain applications to Courts;
~~to~~ expedient to provide rules for acquiring
~~It is hereby enacted as follows:—~~

PART I.

PRELIMINARY.

is called "The Indian Limitation Act,

of British India; but nothing contained
 in Parts II and III, applies—

before the first day of April, 1873,

Indian Divorce Act,

Regulation VI of 1831.

on the first day of July, 1871.

the enactments mentioned in the
 shall be repealed to the extent speci-
 schedule.

ACT No. XV OF 1877. THE INDIAN LIMITATION ACT, 1877.

An Act for the Limitation of Suits and for other purposes.

(RECEIVED THE ASSENT OF HIS EXCELLENCY THE GOVERNOR
GENERAL ON THE 19TH JULY, 1877.)

WHEREAS it is expedient to amend the law relating to the limitation of suits, appeals and certain applications to Courts; And whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

PART I. PRELIMINARY.

§ 1. This Act may be called “The Indian Limitation Act, 1877.” Preamble.

It extends to the whole of British India; but nothing contained in Sections two and three or in Parts II and III applies— Extent of Act.

- (a) to suits under the Indian Divorce Act, or
- (b) to suits under Madras Regulation VI of 1831;

And it shall come into force on the 1st day of October, 1877. Commence-
ment.

§ 2. On and from that day the Acts mentioned in the first schedule hereto annexed shall be repealed to the extent therein specified. Repeal of Acts.

it all references to the Indian Limitation Act, 1871, be read as if made to this Act; and nothing herein that Act contained shall be deemed to affect any acquired, or to revive any right to sue barred, under Act or under any enactment thereby repealed; and References to
Act IX of 1871.

Saving of titles
already acquir-
ed.

ACT No. IX OF 1871.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA. RECEIVED THE
ASSENT OF THE GOVERNOR-GENERAL ON THE 24TH MARCH, 1871.

An Act for the Limitation of Suits and for other purposes.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; And whereas it is also expedient to provide rules for acquiring ownership by possession; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short Title. § 1. This Act may be called "The Indian Limitation Act, 1871."

It extends to the whole of British India; but nothing contained in Sections two and three or in Parts II and III, applies—

- (a) to suits instituted before the first day of April, 1873,
- (b) to suits under the Indian Divorce Act,
- (c) to suits under Madras Regulation VI of 1831.

**Commence-
ment.** This Act shall come into force on the first day of July, 1871.

**Repeal of enact-
ments.** § 2. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the same schedule.

ACT No. XV OF 1877.

THE INDIAN LIMITATION ACT, 1877.

An Act for the Limitation of Suits and for other purposes.

(RECEIVED THE ASSENT OF HIS EXCELLENCY THE GOVERNOR
GENERAL ON THE 19TH JULY, 1877.)

WHEREAS it is expedient to amend the law relating to the limitation of suits, appeals and certain applications to Courts; And whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

§ 1. This Act may be called "The Indian Limitation Act, 1877 :"

Short Title.

It extends to the whole of British India; but nothing contained in Sections two and three or in Parts II and III applies—

Extent of Act.

(a) to suits under the Indian Divorce Act, or

(b) to suits under Madras Regulation VI of 1831;

And it shall come into force on the 1st day of October, 1877.

Commence-
ment.

§ 2. On and from that day the Acts mentioned in the first schedule hereto annexed shall be repealed to the extent therein specified.

Repeal of Acts.

But all references to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed; and

References to
Act IX of 1871.

Saving of titles
already acquir-
ed.

Interpretation-
clause.

§ 3. In this Act, unless there be something repugnant in the subject or context—

“minor” means a person who has not completed his age of eighteen years;

“plaintiff” includes also any person through whom a plaintiff claims;

“nuisance” means anything done to the hurt or annoyance of another’s immovable property and not amounting to a trespass;

“bill of exchange” includes also a hundí;

“trustee” does not include a benámídar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title;

“registered” means duly registered under the law for the registration of documents in force at the time and place of executing the document referred to in the context;

“foreign country” means any country other than British India;

and nothing shall be deemed to be done in “good faith” which is not done with due care and attention.

nothing herein contained shall be deemed to affect the Indian Contract Act, Section 25.

Saving of Act IX of 1872, Section 25.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years; and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October, 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

Suits for which period prescribed by this Act is shorter than that prescribed by Act IX of 1871.

§ 3. In this Act, unless there be something repugnant in the subject or context—

Interpretation-clause.

‘plaintiff’ includes also any person from or through whom a plaintiff derives his right to sue; ‘applicant’ includes also any person from or through whom an applicant derives his right to apply; and ‘defendant’ includes also any person from or through whom a defendant derives his liability to be sued:

‘easement’ includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon the land of another: (*Repealed by the Indian Easements Act V of 1882.*)

‘bill of exchange’ includes also a hundí and a cheque:

‘bond’ includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

‘promissory note’ means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

Dismissal of suits, &c., instituted, &c., after period of limitation.

§ 4. Subject to the provisions contained in sections five to twenty-six (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer: in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.)—A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.)—An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

'trustee' does not include a benámídar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title :

'suit' does not include an appeal or an application :

'registered' means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context :

'foreign country' means any country other than British India ;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

§ 4. Subject to the provisions contained in sections five to twenty-five (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed shall be dismissed, although limitation has not been set up as a defence.

Dismissal of suits, &c., instituted, &c., after period of limitation.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer ; in the case of a pauper, when his application for leave to sue as a pauper is filed ; and in the case of a claim against a Company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.)—A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.)—An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

Description of application.	Period of limitation.	Time from which period begins to run.
	Twelve years.	

Code ; but this Article is absolute and contains no reference to section 230. Such a reference might have been expected if this Article also was intended to be in any way controlled by that section. *Ganapathi v. Balasundara*.⁽¹⁾ The above decision was followed by the Bombay High Court in *Mayabhai Prembhai v. Tribhuvandas Jagjivandas*.⁽²⁾

Application to enforce an order of P. C. falls under this Article. (Jan. 1883.)

(b) In *Luchman Persad Singh v. Kishun Pershad Singh*,⁽³⁾ it was held that although an order of the Privy Council is the paramount decision in the suit, and any application to enforce it is, in point of law, an application to execute the order and not the decree which it confirmed, such applications are governed by this Article.

(1) I. L. R., 7 Mad., 540. | (2) I. L. R., 6 Bom., 258.

(3) I. L. R., 8 Calc., 218.

ACT No. IX OF 1871.

ACT No. XV OF 1877.

THE INDIAN LIMITATION ACT, 1877.

ACT No. IX OF 1871.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA. RECEIVED THE
ASSENT OF THE GOVERNOR-GENERAL ON THE 24TH MARCH, 1871.

An Act for the Limitation of Suits and for other purposes.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts ; And whereas it is also expedient to provide rules for acquiring ownership by possession ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short Title.

§ 1. This Act may be called "The Indian Limitation Act, 1871."

It extends to the whole of British India ; but nothing contained in Sections two and three or in Parts II and III, applies—

- (a) to suits instituted before the first day of April, 1873,
- (b) to suits under the Indian Divorce Act,
- (c) to suits under Madras Regulation VI of 1831.

**Commence-
ment.**

This Act shall come into force on the first day of July, 1871.

**Repeal of enact-
ments.**

§ 2. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the same schedule.

ACT No. XV OF 1877. THE INDIAN LIMITATION ACT, 1877.

**An Act for the Limitation of Suits and for
other purposes.**

(RECEIVED THE ASSENT OF HIS EXCELLENCY THE GOVERNOR
GENERAL ON THE 19TH JULY, 1877.)

WHEREAS it is expedient to amend the law relating to Preamble.
the limitation of suits, appeals and certain applications to
Courts ; And whereas it is also expedient to provide rules
for acquiring by possession the ownership of easements
and other property ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

§ 1. This Act may be called “ The Indian Limitation Short Title.
Act, 1877 :”

It extends to the whole of British India ; but nothing Extent of Act.
contained in Sections two and three or in Parts II and III
applies—

(a) to suits under the Indian Divorce Act, or

(b) to suits under Madras Regulation VI of 1831 ;

And it shall come into force on the 1st day of October, Commence-
ment.
1877.

§ 2. On and from that day the Acts mentioned in the Repeal of Acts.
first schedule hereto annexed shall be repealed to the ex-
tent therein specified.

But all references to the Indian Limitation Act, 1871, References to
Act IX of 1871.
shall be read as if made to this Act ; and nothing herein
or in that Act contained shall be deemed to affect any
title acquired, or to revive any right to sue barred, under Saving of titles
already acquir-
ed.
that Act or under any enactment thereby repealed ; and

Interpretation-
clause.

§ 3. In this Act, unless there be something repugnant in the subject or context—

“minor” means a person who has not completed his age of eighteen years;

“plaintiff” includes also any person through whom a plaintiff claims;

“nuisance” means anything done to the hurt or annoyance of another’s immovable property and not amounting to a trespass;

“bill of exchange” includes also a hundí;

“trustee” does not include a benámídar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title;

“registered” means duly registered under the law for the registration of documents in force at the time and place of executing the document referred to in the context;

“foreign country” means any country other than British India;

and nothing shall be deemed to be done in “good faith” which is not done with due care and attention.

nothing herein contained shall be deemed to affect the Indian Contract Act, Section 25.

Saving of Act IX of 1872, Section 25.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years; and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October, 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

Suits for which period prescribed by this Act is shorter than that prescribed by Act IX of 1871.

§ 3. In this Act, unless there be something repugnant in the subject or context—

Interpretation-clause.

‘plaintiff’ includes also any person from or through whom a plaintiff derives his right to sue; ‘applicant’ includes also any person from or through whom an applicant derives his right to apply; and ‘defendant’ includes also any person from or through whom a defendant derives his liability to be sued:

‘easement’ includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon the land of another: (*Repealed by the Indian Easements Act V of 1882.*)

‘bill of exchange’ includes also a hundi and a cheque:

‘bond’ includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

‘promissory note’ means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

Dismissal of suits, &c., instituted, &c., after period of limitation.

§ 4. Subject to the provisions contained in sections five to twenty-six (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer: in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.)—A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.)—An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

'trustee' does not include a benámídar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title :

'suit' does not include an appeal or an application :

'registered' means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context :

'foreign country' means any country other than British India ;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

§ 4. Subject to the provisions contained in sections five to twenty-five (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed shall be dismissed, although limitation has not been set up as a defence.

Dismissal of suits, &c., instituted, &c., after period of limitation.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer ; in the case of a pauper, when his application for leave to sue as a pauper is filed ; and in the case of a claim against a Company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.)—A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.)—An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

Proviso where Court is closed when period expires.

§ 5. a. If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens ;

Proviso as to appeals and applications for review.

b. Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

Different periods of limitation prescribed by local laws.

§ 6. When, by any law not mentioned in the schedule hereto annexed, and now are hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law.

Appeals from decrees of High Courts on original side.

And nothing herein contained shall affect the periods of limitation prescribed for appeals from, or application to review, any decree, order or judgment of a High Court in the exercise of its original jurisdiction.

Legal disability.

§ 7. If a person entitled to sue be, at the time the right to sue accrued, a minor, or insane, or an idiot, he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When his disability continues up to his death, his representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this section shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which the suit must be brought.

Illustrations.

(a.) The right to sue for the hire of a boat accrues to A during his minority. He comes of age four years after the accrual of the right. He may institute his suit at any time within three years from the date of his coming of age.

(b.) A, to whom a right to sue for a legacy has accrued during his minority, attains full age, eleven years, after such right accrued. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his majority, within which he may bring his suit.

§ 5. If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens :

Proviso where Court is closed when period expires.

Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

Proviso as to appeals and applications for review.

§ 6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

Special and local laws of limitation.
Legal disability

§ 7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

Legal disability.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased as would otherwise have been allowed from the time so prescribed.

Double and successive disabilities.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Disability of representative.

(e.) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accrual of the right A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(d.) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual of the right, his idiosyncrasy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time.

Disability of
one joint-creditor.

§ 8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until they all are free from disability.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a.)—The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b.)—A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(c.)—A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d.)—A right to sue accrues to X during his minority. X dies before attaining majority and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e.)—A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer, A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(f.)—A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

§ 8. When one of several joint-creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Disability of one joint-creditor.

Continuous running of time.

§ 9. When once time has begun to run, no subsequent disability or inability to sue stops it :

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

Suits against express trustees and their representatives.

§ 10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his representatives, for the purpose of following in his or their hands such property, shall be barred by any length of time.

Explanation.—A purchaser in good faith for value from a trustee is not his representative within the meaning of this section.

Suits on foreign contracts.

§ 11. Suits in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Foreign limitation law.

§ 12. No foreign rule of limitations shall be a defence to a suit in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

Exclusion of day on which right to sue accrues.

§ 13. In computing the period of limitation prescribed for any suit, the day on which the right to sue accrued shall be excluded.

Exclusions in case of appeals and certain applications.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, an application to the High Court for the admission of a special appeal, and an application for a review of judgment, the day on which the judgment complained

Illustrations.

(a.)—A incurs a debt to a firm of which B, C and D are partners. B is insane and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b.)—A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

§ 9. When once time has begun to run, no subsequent disability or inability to sue stops it : Continuous running of time.

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

§ 10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property, shall be barred by any length of time. Suits against express trustees and their representatives.

§ 11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act. Suits on foreign contracts.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule. Foreign limitation law.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

§ 12. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. Exclusion of day on which right to sue accrues.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on Exclusion in case of appeals and certain applications.

of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India.

§ 14. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded, unless service of a summons to appear and answer in the suit can, during such absence, be made under the Code of Civil Procedure, section sixty.

Exclusion of time of suing *bono fide* in Court without jurisdiction.

§ 15. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another suit, whether in a Court of first instance or in a Court of Appeal, against the same defendant or some person whom he represents, shall be excluded, where the last-mentioned suit is founded upon the same right to sue, and is instituted in good faith in a Court which from defect of jurisdiction, or other cause of a like nature, is unable to try it.

Explanation 1.—In excluding the time during which a former suit was pending, the day on which that suit was instituted, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction, shall be deemed to be prosecuting a suit within the meaning of this section.

which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

§ 13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

Exclusion of time of defendant's absence from British India.

§ 14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of Appeal, against the defendant shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Exclusion of time of proceeding *bond fide* in Court without jurisdiction.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure, Section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

Like exclusion in case of order under Civil Procedure Code, Sec. 20.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief, shall be excluded, where the last-mentioned application is made in good faith to a Court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Like exclusion in case of application.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted

Exclusion of time during which commencement of suit is stayed by injunction.

§ 16. In computing the period of limitation prescribed for any suit, the commencement of which has been stayed by injunction, the time of the continuance of the injunction shall be excluded.

Exclusion of time during which judgment-debtor sues to set aside execution sale.

§ 17. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a suit to set aside the sale shall be excluded.

Effect of death before right to sue accrues.

§ 18. When a person who would, if he were living, have a right to sue, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative in interest of the deceased capable of suing.

When a person against whom, if he were living, a right to sue would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative whom the plaintiff may sue.

Nothing in the former part of this section applies to suits for the possession of land or of an hereditary office.

Effect of fraud.

§ 19. When any person having a right to sue has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, and where any document necessary to establish such right has been fraudulently concealed.

or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

§ 15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which commencement of suit is stayed by injunction or order.

§ 16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

Exclusion of time during which judgment-debtor is attempting to set aside execution sale.

§ 17. When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Effect of death before right to sue accrues.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of an hereditary office.

§ 18. When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him,

Effect of fraud.

the time limited for commencing a suit,

(a) against the person guilty of the fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing.

§ 20. a. No promise or acknowledgment in respect of a debt or legacy shall take the case out of the operation of this Act, unless such promise or acknowledgment is contained in some writing signed, before the expiration of the prescribed period, by the party to be charged therewith or by his agent generally or specially authorized in this behalf.

b. When such writing exists, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the promise or acknowledgment was signed.

c. When the writing containing the promise or acknowledgment is undated, oral evidence may be given of the time when it was signed. But when it is alleged to have been destroyed or lost, oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section, promise or acknowledgment may be sufficient, though it omits to specify the exact amount of the debt or legacy, or avers that the time for payment or delivery has not yet come, or is accompanied by a refusal to pay or deliver, or is coupled with a claim to a set-off, or is addressed to any person other than the creditor or legatee;

but it must amount to an express undertaking to pay or deliver the debt or legacy or to an unqualified admission of the liability as subsisting.

Explanation 2.—Nothing in this section renders one of several partners or executors chargeable by reason only of a written promise or acknowledgment signed by another of them.

Illustrations.

Z, a bond-debtor, himself writes a letter promising to pay the debt to his creditor A. Z affixes his seal, but does not sign the letter:

Z pays part of the debt and promises orally to pay the rest:

Z publishes an advertisement, requesting his creditors to bring in their claims for examination:

In none of these cases is the debt taken out of the operation of this Act.

the time limited for instituting a suit or making an application,

(a) against the person guilty of the fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

§ 19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing, signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

Effect of acknowledgment in writing.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section “signed” means signed either personally or by an agent duly authorized in this behalf.

Effect of payment of interest as such.

§ 21. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent generally or specially authorized in this behalf,

Effect of part-payment of principal.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent generally or specially authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of principal, the debt has arisen from a contract in writing and the fact of the payment appears in the hand-writing of the person making the same, on the instrument, or in his own books, or in the books of the creditor.

Effect of substituting or adding new plaintiff or defendant.

§ 22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have commenced when he was so made a party :

proviso where original plaintiff dies.

Provided that, when a plaintiff dies, and the suit is continued by his representatives in interest, it shall, as regards them, be deemed to have commenced when it was instituted by the deceased plaintiff :

proviso where original defendant dies.

Provided also, that, when a defendant dies, and the suit is continued against his representatives in interest, it shall, as regards them, be deemed to have been commenced when it was instituted against the deceased defendant.

Computation where there are successive breaches of contract.

§ 23. In the case of a suit for the breach of a contract, where there are successive breaches, a fresh right to sue arises, and a fresh period of limitation begins to run, upon every fresh breach ; and where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.

Computation where the breach is continuing.

§ 20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Effect of payment of interest as such.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

Effect of part-payment or principal.

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

Effect of receipt of produce of mortgaged land.

§ 21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

One of several joint contractors, &c., not chargeable by reason of acknowledgment or payment made by another of them.

§ 22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Effect of substituting or adding new plaintiff or defendant.

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff :

Proviso where original plaintiff dies.

Provided also, that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

Proviso where original defendant dies.

§ 23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

Nothing in the former part of this section applies to suits for the breach of contracts for the payment of money by instalments where, on default made in payment of one instalment, the whole becomes due.

Illustrations.

(a.)—A contracts to pay an annuity to B, for his life by quarterly instalments. A fails to pay any of the instalments. Here, upon every fresh failure, a fresh right to sue arises and a fresh period of limitation begins to run; and this Act may bar the remedy on the earlier breaches without affecting the remedy on the later breaches.

(b.)—A, a tenant, covenants with B, his landlord, to keep certain buildings in repair. At every moment of the time during which the buildings continue out of repair and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

Continuing nuisance.

§ 24. In the case of a continuing nuisance, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the nuisance continues.

Illustration.

A diverts B's water-course. At every moment of the time during which the diversion continues and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

Suit for compensation for Act becoming unlawful.

§ 25. In the case of a suit for compensation for an act lawful in itself, which becomes unlawful in case it causes damage, the period of limitation shall be computed from the time when the damage accrues.

Illustration.

A owns the surface of a field. B owns the sub-soil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation runs from the time of the subsidence.

Computation of time mentioned in instruments.

§ 26. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(a.)—A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b.)—A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

§ 24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

Illustrations.

(a.)—A owns the surface of a field. B owns the sub-soil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(b.)—A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

§ 25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Computation of time mentioned in instruments.

Illustrations.

(a.)—A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b.)—A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

PART IV. ACQUISITION OF OWNERSHIP BY POSSESSION.

Acquisition of
right to easementa.

§ 27. Where the access and use of light or air to and for any building has been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

and where any way or water-course, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, water-course, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to, or acquiesced in, for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a.)—A suit is brought in 1871 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January 1850 to 1st January 1870. The plaintiff is entitled to judgment.

(b.)—In a like suit also brought in 1871 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1848 to 1868. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.)—In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.*

§ 26. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

Acquisition of
right to ease-
ments.

and where any way or water-course, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, water-course, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a).—A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1860 to 1st January, 1880. The plaintiff is entitled to judgment.

* Sections 26 and 27 are, as to Madras, Coorg and the Central Provinces, repealed by Act V of 1882, as also is the definition of easement in the interpretation section.

Exclusion in favor of reversioner of servient tenement.

§ 28. Provided that, when any land or water upon, over or from which any easement (other than the access and use of light and air) has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof,

the time of the enjoyment of such easement during the continuance of such interest or term, shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a deceased Hindu widow, had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to land or hereditary office.

§ 29. At the determination of the period hereby limited to any person for instituting a suit for possession of any land or hereditary office, his right to such land or office shall be extinguished.

(b.)—In a like suit also brought in 1861, the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.)—In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

§ 27. Provided that, when any land or water upon, over, or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Exclusion in favor of reversioner of servient tenement.

Illustrations.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

§ 28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Extinguishment of right to property.

(See Section 2.)

Number and year.	Subject or title.	Extent of Repeal.
21 Jac. I, cap. 16.	An Act for limitation of actions and for avoiding of suits in law.	The whole Statute, so far as it applies to British India.
4 Ann., cap. 16.	An Act for the amendment of the law and the better advancement of Justice.	Sections 17, 18 and 19, so far as they apply to British India.
33 Geo. III, cap. 52.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with their exclusive trade, under certain limitations; for establishing further regulations for the Government of the said territories, and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said Company; and for making provision for the good order and Government of the towns of Calcutta, Madras and Bombay.	So much of Section 162 as relates to the limitation of civil suits in British India.
53 Geo. III, cap. 155.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges; for establishing further Regulations for the Government of the said territories, and the better administration of justice within the same; and for regulating the trade to and from the places within the limits of the said Company.	Section 124, so far as it applies to British India.
9 Geo. IV, cap. 74.	Administration of Criminal Justice.	So much of Section 51 as relates to civil suits.
6 & 7 Vic., cap. 94.	Foreign Jurisdiction Act. ...	Section 7, so far as it applies to British India.
Act. No. XIV of 1840.	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English Law, the provisions of the Statute 9 Geo. IV, cap. 14.	From and including the words "Whereas by an Act" down to and including the words "Defendants against the Plaintiff."

Number and year of Acts.	Title.	Extent of Repeal.
X of 1865 ...	The Indian Succession Act.	In Section 321 the words "within two years after the death of the testator, or one year after the legacy has been paid."
IX of 1871 ...	The Indian Limitation Act, 1871.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section 599, and in section 601 the words "within thirty days from the date of the order."

Number and year.	Subject or title.	Extent of Repeal.
Act No. XI of 1841.	Military Courts of Requests ...	The proviso in section nine.
Act No. XX of 1847.	Copyright Act	In section sixteen, the words 'actions, suits, bills.'
Act No. XII of 1855.	An Act to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs.	In section one, the words "and provided such action shall be brought within one year after the death of such persons," and the words "and so as such action shall be commenced within two years after the committing of the wrong."
Act No. XIII of 1855.	Compensation for loss occasioned by death caused by actionable wrong.	In section two, the words "and that every such action shall be brought within twelve calendar months after the death of such deceased person."
Act No. XXV of 1857.	Forfeiture for mutiny	Section, nine.
Act No. VIII of 1859.	The Code of Civil Procedure ...	In section one hundred and nineteen, the words "within a reasonable time not exceeding thirty days after any process for enforcing the judgment has been executed," and the words "within thirty days from the date of the judgment." In section two hundred and thirty, the words "within one month from the date of the dispossession." The last twelve words of section two hundred and forty-six. In section two hundred and fifty-six, the words "At any time

Number and year.	Subject or title.	Extent of Repeal.
		<p>within thirty days from the date of the sale." In section two hundred and sixty-nine, the words "if made within one month from the date of such existence or obstruction or of such dispossession, as the case may be." In section three hundred and twenty-four, the second sentence. In section three hundred and twenty-seven, the words "within six months from the date of the award." In section three hundred and thirty-three, from and including the words "within the period" down to the end of the section. In section three hundred and forty-seven, the words "within thirty days from the date of the dismissal." In section three hundred and seventy-three, the words "within the period prescribed for the presentation of a memorandum of appeal." So much of section three hundred and seventy-seven as has not been repealed.</p>
Act No. XIV of 1859.	An act to provide for the limitation of suits.	The whole act, except so much of section fifteen as does not relate to the limitation of suits.
Act No. IX of 1860.	Workmen and employers	So much of section two as relates to the limitation of suits.
Act No. XXXI of 1860.	Arms Act	So much of section forty-nine as relates to the limitation of suits.

Number and year.	Subject or title.	Extent of Repeal.
Act No. V of 1861.	Mofussil Police	So much of section forty-two as relates to the limitation of suits.
Act No. XXIII of 1861.	Civil Procedure Code Amendment.	Section 12.
Act No. XXV of 1861.	Criminal Procedure Code ...	Section four hundred and fifteen.
Act No. I of 1868.	Civil Courts in British Burma ...	Section twenty-four.
Act No. VI of 1868.	Consolidated Customs Act ...	So much of section two hundred and fourteen as relates to the limitation of suits.
Act No. XXIII of 1868.	Claims to Waste-lands ...	So much of section five as relates to the limitation of suits.
Act No. VII of 1868.	Government Forests Act ...	So much of section sixteen as relates to the limitation of suits.
Act No. XX of 1866.	Registration Act	Section fifty-one.
Act No. XIV of 1868.	Contagious Diseases Act ...	So much of section twenty-five as relates to the limitation of suits.
Act No. XX of 1869.	Volunteers	So much of section twenty-six as relates to the limitation of suits.
Act No. X of 1870.	Land Acquisition	So much of section fifty-eight as relates to the limitation of suits.
Act No. IV of 1871.	Coroners	In section forty-two, the words 'after the expiration of three months from such fact or failure, nor.'

Number and year.	Subject or title.	Extent of Repeal.
Bombay Regulation V of 1827.	A Regulation defining the Limitations, as to Time, within which Civil Actions may be prosecuted, and containing Rules of Judication respecting written Acknowledgments of Debts executed without receipt of a full consideration; also regarding Interest, the tendering payment of Debts, and the disposal of Property mortgaged or pledged.	Chapter one.

(SEE SECTION 4.)

First Division : Suits.

Description of suit.	Period of limitation.	Time when period begins to run.
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (<i>to provide for the adjudication of claims to waste-lands.</i>)	<p style="text-align: center;">PART I. <i>Thirty days.</i></p> Thirty-days ...	When notice of the award is delivered to the plaintiff.
2.—For doing, or for omitting to do, an act in pursuance of any enactment in force for the time being in British India.	<p style="text-align: center;">PART II. <i>Ninety days.</i></p> Ninety-days ...	When the act or omission took place.
3.—Under Act No. XIV of 1859 (<i>to provide for the limitation of suits</i>), section fifteen, to recover possession of immoveable property.	<p style="text-align: center;">PART III. <i>Six months.</i></p> Six months ...	When the dispossession occurs.
4.—Under Act No. IX of 1860 (<i>to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers,</i>) section one.	Do. ...	When the wages, hire, or price of work claimed accrued due.
5.—Under Act No. V of 1866 (<i>to provide a summary procedure on bills of exchange, and to amend, in certain respects, the commercial law of British India.</i>)	Do. ...	When the bill or promissory note becomes due and payable.

(SEE SECTION 4.)

First Division: Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (<i>to provide for the adjudication of claims to waste-lands.</i>)	PART I. <i>Thirty days.</i> Thirty days.	When notice of the award is delivered to the plaintiff.
2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	PART II. <i>Ninety days.</i> Ninety days.	When the act or omission takes place.
3.—Under the Specific Relief Act, 1877, Section 9, to recover possession of immovable property.	PART III. <i>Six months.</i> Six months.	When the dispossession occurs.
4.—Under Act No. IX of 1860 (<i>to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers</i>), Section 1.	Do. ...	When the wages, hire or price of work claimed accrue or accrues due.
5.—Under the Code of Civil Procedure, Chapter XXXIX (<i>of summary procedure on negotiable instrument</i>).	Do. ...	When the instrument sued upon becomes due and payable.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	<p>PART IV. One year.</p> <p>One year ...</p>	When the penalty or forfeiture is incurred.
7.—For the wages of a domestic servant, artisan, or laborer not provided for by this schedule, No. 4.	Do. ...	When the wages sued for accrue due.
8.—For the price of food or drink sold by the keeper of an hotel, tavern, or lodging house.	Do. ...	When the food or drink is delivered.
9.—For the price of lodging.	Do. ...	When the lodging ends.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Do. ...	When the purchaser takes actual possession under the sale sought to be impeached.

First Division : Suits—(Continued.)

Description of suit	Period of limitation.	Time from which period begins to run.
<p>6.—Upon a Statute, Act, Regulation or By-law, for a penalty or forfeiture.</p> <p>7.—For the wages of household servant, artisan or laborer not provided for by this schedule, No. 4.</p> <p>8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging house.</p> <p>9.—For the price of lodging.</p> <p>10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.</p> <p>11.—By a person against whom an order is passed under Sections 280, 281, 282 or 335 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order.</p>	<p>PART IV. One year.</p> <p>One year ...</p> <p>Do. ...</p> <p>Do. ...</p> <p>Do. ...</p> <p>Do. ...</p> <p>Do. ...</p>	<p>When the penalty or forfeiture is incurred.</p> <p>When the wages accrue due.</p> <p>When the food or drink is delivered.</p> <p>When the price becomes payable.</p> <p>When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.</p> <p>The date of the order.</p>

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
11.—For damages for infringing copyright or any other exclusive privilege.	PART IV. One year ...	The date of the infringement.
12.—By executors, administrators, or representatives under Act No. XII of 1855 (<i>to enable executors, administrators, or representatives to sue and be sued for certain wrongs.</i>)	Do ...	The date of the death of the person wronged.
13.—By executors, administrators, or representatives under Act No. XIII of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.</i>)	Do. ...	The date of the death of the person killed.
14.—To set aside any of the following sales :— (a) sale in execution of a decree of a Civil Court ; (b) sale in pursuance of a decree or order of a Collector or other officer of revenue ; (c) sale for arrears of Government revenue or for any demand recoverable as such arrears ; (d) sale of a patni taluq sold for current arrears of rent.	Do. ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
<i>Explanation</i> —In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.		
15.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Do. ..	The date of the final decision or order in the case by a Court competent to determine it finally.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
See Article 20.	PART IV.	
See Article 21.		
<p>12.—To set aside any of the following sales :—</p> <p>(a) sale in execution of a decree of a Civil Court;</p> <p>(b) sale in pursuance of a decree or order of a Collector or other officer of revenue ;</p> <p>(c) sale for arrears of Govt. revenue, or for any demand recoverable as such arrears ;</p> <p>(d) sale of a patni taluq sold for current arrears of rent.</p> <p><i>Expln.</i>—In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.</p>	One year. ...	
<p>13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.</p>	Do. ...	The date of the final decision or order in the case by a Court competent to determine it finally.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
16.—To set aside any act of an Officer of Government in his official capacity, not herein otherwise expressly provided for.	One year ...	The date of the act.
17.—Against Government to set aside any attachment, lease, or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	Do. ...	When the attachment, lease, or transfer is made.
18.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Do. ...	When the payment is made.
19.—Against Government for compensation for land acquired for public purposes.	Do. ...	The date of determining the amount of the compensation.
20.—Like suit for compensation when the acquisition is not completed.	Do. ...	The date of the refusal to complete.
21.—For false imprisonment.	Do. ...	When the imprisonment ends.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	PART IV. One year. ...	The date of the Act or order.
15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	Do. ...	When the attachment, lease or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Do. ...	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	Do. ...	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Do. ...	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Do. ...	When the imprisonment ends.
20.—By executors, administrators or representatives, under Act No. XII of 1855 (<i>to enable</i>	Do. ...	The date of the death of the person wronged.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART IV.		
22.—For any other injury to the person.	One year	... When the injury is committed.
23.—For a malicious prosecution.	Do.	... When the plaintiff is acquitted.
24.—For libel ...	Do.	... When the libel is published.
25.—For slander ...	Do.	... When the words are spoken.
26.—For taking or damaging moveable property.	Do.	... When the taking or damage occurs.
27.—For loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Do.	... When the loss occurs.
28.—For inducing a person to break a contract with the plaintiff.	Do.	... The date of the breach.
29.—For an illegal, irregular, or excessive distress.	Do.	... The date of the distress.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>the executors or representatives to sue and be sued for certain wrongs.)</i>	PART IV.	
21.—By executors, administrators or representatives, under Act No. XIII of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.</i>)	One year ...	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Do. ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Do. ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel.	Do. ...	When the libel is published.
25.—For compensation for slander.	Do. ...	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Do. ...	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Do. ...	The date of the breach.
28.—For compensation for an illegal, irregular or excessive distress.	Do. ...	The date of the distress.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART IV.		
30.—For wrongful seizure of moveable property under legal process.	One year	The date of the seizure.
PART V.		
31.—For obstructing a way or a water-course.	Two years	The date of the obstruction.
32.—For diverting a water-course.	Do.	The date of the diversion.
33.—For wrongfully detaining title deeds.	Do.	When the title to the property comprised in the deeds is adjudged to the plaintiff, or the detainer's possession otherwise becomes unlawful.
34.—For wrongfully detaining any other moveable property.	Do.	When the detainer's possession becomes unlawful.
35.—For specific recovery of moveable property in cases not provided for by this schedule, numbers 48 and 49.	Do.	When the property is demanded and refused.
36.—Against a carrier for losing or injuring goods.	Do.	When the loss or injury occurs.
37.—Against a carrier for delay in delivering goods.	Do.	When the goods ought to be delivered.
38.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Do.	The time of the perversion.
39.—Under Act No. XII of 1855 (to enable executors, administrators or representatives to sue and be sued for certain wrongs) against an executor, administrator, or other representative.	Do.	When the wrong complained of is done.

First Division : Suits—(Continued.)

Description of suit	Period of limitation.	Time from which period begins to run.
29.—For compensation for wrongful seizure of moveable property under legal process.	PART IV. One year ...	The date of the seizure.
	PART V. Two years.	
30.—Against a carrier for compensation for losing or injuring goods.	Two years ...	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Do. ...	When the goods ought to be delivered.
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Do. ...	When the perversion first becomes known to the person injured.
33.—Under Act No. XII of 1855 (<i>to enable executors, administrators or representatives to sue and be sued for certain wrongs</i>) against an executor, administrator or other representative.	Do. ...	When the wrong complained of is done.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
40.—For compensation for any wrong, malfeasance, non-feasance or misfeasance, independent of contract and not herein specially provided for.	<p style="text-align: center;">PART V.</p> <p>Two years ...</p>	When the wrong is done or the default happens.
41.—For the recovery of a wife.	Do. ...	When possession is demanded and refused.
42.—For the restitution of conjugal rights.	Do. ...	When restitution is demanded and refused.
43.—For trespass upon immoveable property.	<p style="text-align: center;">PART VI.</p> <p style="text-align: center;"><i>Three years.</i></p> <p>Three years ...</p>	When the trespass takes place.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART V.	
34.—For the recovery of a wife.	Two years ...	When possession is demanded and refused.
35.—For the restitution of conjugal rights.	Do. ...	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Do. ...	When the malfeasance, misfeasance or nonfeasance takes place.
	PART VI. <i>Three years.</i>	
37.—For compensation for obstructing a way or a water-course.	Three years.	The date of the obstruction.
38.—For compensation for diverting a water-course.	Do. ...	The date of the diversion.
39.—For compensation for trespass upon immovable property.	Do. ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Do. ...	The date of the infringement.
41.—To restrain waste ...	Do. ...	When the waste begins.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
	PART VI.	
44.—To contest an award under any of the following Regulations of the Bengal Code :— VII of 1822. IX of 1825, and IX of 1833.	Three years.	The date of the final award or order in the case.
45.—By a party bound by such award to recover any property comprised therein.	Do. ...	Do.
46.—By any person bound by an order respecting the possession of property made under Act No. XVI of 1833, section one, clause two, or Act No. XXV of 1861, chapter twenty-two, or Bombay Act No. V of 1864, or by any one claiming under such person, to	Do. ...	The date of the final order in the case.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
42.—For compensation for injury caused by an injunction wrongfully obtained.	Three years...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, Section 320 or 321, or under the Probate and Administration Act, Section 139 or 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Do. ...	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a sale by his guardian.	Do. ...	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code :— VII of 1822. IX of 1825, and IX of 1833.	Do. ...	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Do. ...	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, Chapter XL, or the Bombay Mám-latdárs' Courts' Act,	Do. ...	The date of the final order in the case.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period ● begins to run.
recover the property comprised in such order.	PART VI. Three years.	
47.—For lost moveable property not dishonestly misappropriated or converted.	Do. ...	When the property is demanded and refused.
48.—For moveable property acquired by theft, extortion, cheating, or dishonest misappropriation or conversion.	Do. ...	Do.
49.—For the hire of animals, vehicles, boats, or household furniture.	Do. ...	When the hire becomes payable.
50.—For the balance of money advanced in payment of goods to be delivered.	Do. ...	When the goods ought to be delivered.
51.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Do. ...	The date of the delivery of the goods.
52.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Do. ...	The expiry of the period of credit.
53.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Do. ...	When the period of the proposed bill elapses.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
or by any one claiming under such person, to recover the property comprised in such order.	PART VI. Three years.	
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Do.	... When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Do.	... When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats or household furniture.	Do.	... When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Do.	... When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Do.	... The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Do.	... When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Do.	... When the period of the proposed bill elapses.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VI.		
54.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years ...	The date of the sale.
55.—For the price of work done by the plaintiff for the defendant at his request where no time has been fixed for payment.	Do. ...	When the work is done.
56.—For money payable for money lent.	Do. ...	When the loan is made.
57.—Like suit when the lender has given a cheque for the money.	Do. ...	When the cheque is paid.
58.—For money lent under an agreement that it shall be payable on demand.	Do. ...	When the demand is made.
59.—For money payable to the plaintiff for money paid for the defendant.	Do. ...	When the money is paid.
60.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Do. ...	When the money is received
61.—For money payable for interest upon money due from the defendant to the plaintiff.	Do. ...	When the interest becomes due.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI.	
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years...	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Do. ...	When the work is done.
57.—For money payable for money lent.	Do. ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Do. ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Do. ...	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand.	Do. ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Do. ...	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Do. ...	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Do. ...	When the interest becomes due.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VI.		
62.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years ...	When the accounts are stated, unless where the debt is made payable at a future time and then when that time arrives.
63.—Upon a promise to do anything at a specified time, or upon the happening of a specified contingency.	Do. ...	At the time specified or upon the contingency happening.
64.—Against a factor for an account.	Do. ...	When the account is demanded, or, where no such demand is made, when the agency terminates.
65.—On a single bond where a day is specified for payment.	Do. ...	The day so specified.
66.—On a single bond where no such day is specified.	Do. ...	The date of executing the bond.
67.—On a bond subject to a condition.	Do. ...	When the condition is broken.
68.—On a bill of exchange or promissory note payable at a fixed time after date.	Do. ...	When the bill or note falls due.
69.—On a bill of exchange payable at or after sight.	Do. ...	When the bill is presented

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.</p> <p>65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.</p> <p>66.—On a single bond where a day is specified for payment.</p> <p>67.—On a single bond where no such day is specified.</p> <p>68.—On a bond subject to a condition.</p> <p>69.—On a bill of exchange or promissory note payable at a fixed time after date.</p> <p>70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.</p>	<p>PART VI.</p> <p>Three years...</p>	<p>When the accounts are stated in writings signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.</p>
	Do. ...	When the time specified arrives or the contingency happens.
	Do. ...	The day so specified.
	Do. ...	The date of executing the bond.
	Do. ...	When the condition is broken.
	Do. ...	When the bill or note falls due.
	Do. ...	When the bill is presented.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
	PART VI.	
70.—On a bill of exchange accepted payable at a particular place.	Three years ...	When the bill is presented at that place.
71.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Do. ...	When the fixed time expires.
72.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Do. ...	When the demand is made.
73.—By the endorsee of a bill or promissory note against the endorser.	Do. ...	The date of the endorsement.
74.—On a promissory note or bond payable by instalments.	Do. ...	The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one instalment the whole shall be due.	Do. ...	The time of the first default, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Do. ...	The time of the delivery to the payee.

First Division : Suits—(Continued.)

Description of suit	Period of limitation.	Time from which period begins to run.
71.—On a bill of exchange accepted payable at a particular place.	PART VI. Three years...	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Do. ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Do. ...	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Do. ...	The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Do. ...	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Do. ...	The date of the delivery to the payee.

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First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VI.		
70.—On a bill of exchange accepted payable at a particular place.	Three years ...	When the bill is presented at that place.
71.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Do. ...	When the fixed time expires.
72.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing requiring or postponing the time to sue.	Do. ...	When the demand is made.
73.—By the endorsee of a bill of promissory note against the endorser.	...	The time when the bill is endorsed.
74.—On a promissory note or bond payable by instalments.	...	The time when the first instalment is due.
75.—On a promissory note or bond payable by instalments, when the fault of one of the parties shall be proved.	Do.	The time when the first instalment is due.
76.—On a promissory note payable by the maker to a third person to be delivered to the payee after a certain event should happen.		

First Division : Suits—(Continued.)

Description of suit	Period of limitation.	Time from which period begins to run.
71.—On a bill of exchange accepted payable at a particular place.	PART VI. Three years...	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Do. ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Do. ...	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Do. ...	The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
	Do. ...	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver. The date of the delivery to the payee.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
40.—For compensation for any wrong, malfeasance, non-feasance or misfeasance, independent of contract and not herein specially provided for.	<p style="text-align: center;">PART V.</p> <p>Two years ...</p>	When the wrong is done or the default happens.
41.—For the recovery of a wife.	Do. ...	When possession is demanded and refused.
42.—For the restitution of conjugal rights.	Do. ...	When restitution is demanded and refused.
43.—For trespass upon immovable property.	<p style="text-align: center;">PART VI.</p> <p>Three years.</p> <p>Three years ...</p>	When the trespass takes place.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
34.—For the recovery of a wife. 35.—For the restitution of conjugal rights. 36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	PART V.	
	Two years ...	When possession is demanded and refused.
	Do. ...	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.
	Do. ...	When the malfeasance, misfeasance or nonfeasance takes place.
37.—For compensation for obstructing a way or a water-course. 38.—For compensation for diverting a water-course. 39.—For compensation for trespass upon immovable property. 40.—For compensation for infringing copyright or any other exclusive privilege. 41.—To restrain waste ...	PART VI. <i>Three years.</i>	
	Three years.	The date of the obstruction.
	Do. ...	The date of the diversion.
	Do. ...	The date of the trespass.
	Do. ...	The date of the infringement.
	Do. ...	When the waste begins.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VI. Three years.		
94.—For property which the plaintiff has conveyed while insane.	Do. ...	When the plaintiff is restored to sanity and has knowledge of the conveyance.
95.—For relief on the ground of fraud.	Do. ...	When the fraud becomes known to the party wronged.
96.—To set aside a decree obtained by fraud.	Do. ...	Do.
97.—For relief on the ground of mistake in fact.	Do. ...	When the mistake becomes known to the plaintiff.
98.—For money paid upon an existing consideration, which afterwards fails.	Do. ...	The date of the failure.
99.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Do. ...	The date of the trustee's death, or if the loss has not then been occasioned, the date of the loss.
100.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Do. ...	The date of the plaintiff's advance in excess of his own share.
101.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Do. ...	When the right to contribution accrues.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI.	
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years...	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Do. ...	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Do. ...	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Do. ...	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Do. ...	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Do. ...	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Do. ...	The date of the plaintiff's advance in excess of his own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Do. ...	When the right to contribution accrues.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VI.		
102.—For a seaman's wages.	Three years ...	The end of the voyage during which the wages are earned.
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Do. ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (<i>mu'wajjal</i>).	Do. ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Do. ...	The date of the receipt.
106.—For an account and a share of the profits of a dissolved partnership.	Do. ...	The date of the dissolution.
107.—By a Hindu manager of a joint estate for contribution in respect of a payment made by him on account of the estate.	Do. ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Do. ...	When the trees are cut down.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
101.—For a seaman's wages.	Three years...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Do. ...	When the wages accrue due.
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i> .)	Do. ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (<i>mu'wajjal</i> .)	Do. ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Do. ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Do. ...	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Do. ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Do. ...	When the trees are cut down.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VI.		
109.—For the profits of immoveable property belonging to the plaintiff wrongfully received by the defendant.	Three years ...	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, the date of the decree of the appellate Court.
110.—For arrears of rent.	Do. ..	When the arrears become due.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money.	Do. ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Do. ...	When the call was made.
113.—For specific performance of a contract.	Do. ...	When the plaintiff has notice that his right is denied.
114.—For the rescission of a contract.	Do. ...	When the contract is executed by the plaintiff.
115.—For the breach of any contract, express or implied, not in writing registered, and not herein specially provided for.	Do. ...	When the contract is broken or (where there are successive breaches) when the breach sued for occurs, or (where the breach is continuing) when it ceases.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
<p style="text-align: center;">PART VI.</p> <p>109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.</p>		
	<p style="text-align: center;">Three years...</p>	
110.—For arrears of rent.	Do. ...	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money.	Do. ...	When the arrears become due. The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Do. ...	When the call is payable.
113.—For specific performance of a contract.	Do. ...	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Do. ..	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered, and not herein specially provided for.	Do. ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
	PART VII. Six years ...	
116.—Upon a judgment obtained in a foreign country.	Do. ...	The date of the judgment.
117.—On a promise or contract in writing registered.	Do. ...	When the period of limitation would begin to run against a suit brought on a similar promise or contract not registered.
118.—Suit for which no period of limitation is provided elsewhere in this schedule.	Do. ...	When the right to sue accrues.
	PART VIII. Twelve years ...	
119.—By an auction-purchaser or any one claiming under him to avoid incumbrances of under-tenures in an entire estate sold for arrears of Government revenue, the estate being, by virtue of such sale, freed from incumbrances and under-tenures.	Do. ...	When the sale becomes final and conclusive.
120.—To avoid incumbrances or under-tenures in a <i>patni taluq</i> or other saleable tenure sold for arrears of rent, the taluq or tenure being, by virtue of such sale freed from incumbrance and under-tenures.	Do. ...	When the sale becomes final and conclusive.
121.—Upon a judgment obtained in British India, or a recognition.	Do. ...	The date of the judgment or recognizance.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VII.	
116.—For compensation for the breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure.	Do. ...	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Do. ...	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Do. ...	When the rights of the adopted son as such are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Do. ...	When the right to sue accrues.
	PART VIII.	
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue or in a <i>patni taluk</i> or other saleable tenure sold for arrears of rent.	Twelve years.	When the sale becomes final and conclusive.
122.—Upon a judgment obtained in British India, or a recognizance.	Do. ...	The date of the judgment or recognizance.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VIII.		
122.—For a legacy or for a distributive share of the moveable property of a testator or intestate.	Twelve years ...	When the legacy or share becomes payable or deliverable. ●
123.—For possession of an hereditary office.	Do. ...	When the defendant, or some person through whom he claims, took possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
124.—Suit during the life of a Hindu widow by a Hindu entitled to the possession of land and her death to have an alienation made by the widow declared to be void except for her life.	Do. ...	The date of the alienation.
125.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Do. ...	The date of the alienation.
126.—Like suit by a Hindu governed by the law of the Dayabhaga.	Do. ...	When the father dies.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
123.—For a legacy or for a share of a residue bequeathed by testator, or for a distributive share of the property of an intestate.	PART VIII. Twelve years.	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Do. ...	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Do. ...	The date of the alienation.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Do. ...	When the alienee takes possession of the property.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
	PART VIII.	
127.—By a Hindu excluded from joint family property to enforce a right to share therein.	Twelve years ...	When the plaintiff claims and is refused his share.
128.—By a Hindu for maintenance.	Do. ..	When the maintenance sued for is claimed and refused.
129.—To establish or set aside an adoption.	Do. ...	The date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father.
130.—For the resumption or assessment of rent-free land.	Do. ...	When the right to resume or assess the land first accrued. Provided that no such suit shall be maintained where the land forms part of a permanently-settled estate, and has been held rent-free from the time of the Permanent Settlement.
131.—To establish a periodically recurring right.	Do. ...	When the plaintiff is first refused the enjoyment of the right.
132.—For money charged upon immoveable property.	Do. ...	When the money sued for becomes due.
<i>Explanation.</i> —The allowance and fees called <i>malikana</i> and <i>haqq</i> s shall, for the purposes of this clause, be deemed to be money charged upon immoveable property.		
133.—To recover moveable property conveyed in trust, deposited or pawned and afterwards bought from the trustee, depositary or pawnee in good faith and for value.	Do. ...	The date of the purchase.

First Division: Suits—(Continued.)

Description of suit	Period of limitation.	Time from which period begins to run.
PART VIII.		
127.—By a person excluded from joint-family property to enforce a right to share therein.	Twelve years.	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Do. ...	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Do. ...	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Do. ...	When the right to resume or assess the land first accrues
131.—To establish a periodically recurring right.	Do. ...	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	Do. ...	When the money sued for becomes due.
<i>Explanation.</i> —The allowance and fees respectively called <i>málikána</i> and <i>haqq</i> s shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.		
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, de-	Do. ...	The date of the purchase.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VIII.		
127.—By a Hindu excluded from joint family property to enforce a right to share therein.	Twelve years ...	When the plaintiff claims and is refused his share.
128.—By a Hindu for maintenance.	Do. ..	When the maintenance sued for is claimed and refused.
129.—To establish or set aside an adoption.	Do. ...	The date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father.
130.—For the resumption or assessment of rent-free land.	Do. ...	When the right to resume or assess the land first accrued. Provided that no such suit shall be maintained where the land forms part of a permanently-settled estate, and has been held rent-free from the time of the Permanent Settlement.
131.—To establish a periodically recurring right.	Do. ...	When the plaintiff is first refused the enjoyment of the right.
132.—For money charged upon immoveable property.	Do. ...	When the money sued for becomes due.
<i>Explanation.</i> —The allowance and fees called <i>malikana</i> and <i>haqq</i> s shall, for the purposes of this clause, be deemed to be money charged upon immoveable property.		
133.—To recover moveable property conveyed in trust, deposited or pawned and afterwards bought from the trustee, depositary or pawnee in good faith and for value.	Do. ...	The date of the purchase.

First Division: Suits—(Continued.)

Description of suit	Period of limitation.	Time from which period begins to run.
127.—By a person excluded from joint-family property to enforce a right to share therein. 128.—By a Hindu for arrears of maintenance. 129.—By a Hindu for a declaration of his right to maintenance.	PART VIII. Twelve years. Do. ... Do. ...	When the exclusion becomes known to the plaintiff. When the arrears are payable. When the right is denied.
130.—For the resumption or assessment of rent-free land.	Do. ...	When the right to resume or assess the land first accrues
131.—To establish a periodically recurring right.	Do. ...	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	Do. ...	When the money sued for becomes due.
<i>Explanation.</i> —The allowance and fees respectively called <i>mālikāna</i> and <i>haqq</i> s shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.	Do. ...	The date of the purchase.
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, de-	Do. ...	The date of the purchase.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
	PART VIII. Twelve years.	
134.—To recover possession of the ^e moveable property conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee in good faith and for value.	Do. ...	The date of the purchase.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Do. ...	When the mortgagee is first entitled to possession.
136.—By a purchaser at a private sale for possession of the immoveable property sold, when the vendor was out of possession at the date of the sale.	Do. ...	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the execution-debtor was out of possession at the date of the sale.	Do. ...	When the execution-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when he never has had possession.	Do. ...	The date of the sale.
139.—Like suit when the purchaser had possession, but was afterwards dispossessed.	Do. ...	The date of the dispossession.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration.	Do. ...	The date of the purchase.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Do. ...	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	Do. ...	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Do. ...	When the judgment-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land when the judgment-debtor was in possession at the date of the sale.	Do. ...	The date of the sale.
139.—By a landlord to recover possession from a tenant.	Do. ...	When the tenancy is determined.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
PART VIII,		
140.—By a landlord to recover possession from a tenant.	Twelve years ...	When the tenancy is determined.
141.—By a remainderman, a reversioner, (other than a landlord) or a devisee, for possession of immoveable property.	Do. ...	When his estate falls into possession.
142.—Like suit by a Hindu entitled to the possession of immoveable property on the death of a Hindu widow.	Do. ...	When the widow dies.
143.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Do. ...	The date of the dispossession or discontinuance.
144.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Do. ...	When the forfeiture was incurred or the condition broken.
145.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Do. ...	When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff.
146.—For a declaration of right to an easement.	Do. ...	When the easement ceased to be enjoyed by the plaintiff, or the persons on whose behalf he sues.
PART IX.		
147.—Against a depositary or pawnee to recover movable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn, unless where an acknowledgment of the title of the depositor or pawner, or of his right of redemption, has before

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. Twelve years.	
140.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.	Do. ...	When his estate falls into possession.
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Do. ...	When the female dies.
142.—For possession of immoveable property, when the plaintiff, while in possession of the property has been dispossessed or has discontinued the possession.	Do. ...	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Do. ...	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Do. ...	When the possession of the defendant becomes adverse to the plaintiff.
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	PART IX. Thirty years.	The date of the deposit or pawn.

First Division : Suits—(Continued.)

Description of suit.	Period of limitation.	Time when period begins to run.
	PART IX. Thirty years.	the expiration of the prescribed period been made in writing signed by the depositary, or pawnee, or some person claiming under him, and, in such case, the date of the acknowledgment.
	PART X. Sixty years.	
148.—Against a mortgagee to recover possession of immovable property mortgaged.	Sixty years ...	The date of the mortgage unless where an acknowledgment of the title of the mortgagor or of his right of redemption has, before the expiration of the prescribed period, been made in writing signed by the mortgagee or some person claiming under him, and, in such case, the date of the acknowledgment. Provided that all claims to redeem, arising under instruments of mortgage of immovable property situate in British Burmah, which have been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that Province immediately before the same day.
149.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged.	Do. ...	When any part of the principal or interest was last paid on account of the mortgage debt.

First Division: Suits—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	<p>PART IX. Thirty years.</p>	When any part or the principal of interest was last paid on account of the mortgage debt.
147.—By a mortgagee for foreclosure or sale.	<p>PART X. Sixty years ...</p>	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Do. ...	When the right to redeem or to recover possession accrues.
		Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burmah, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.

First Division : Suits—(Concluded.)

Description of suit.	Period of limitation.	Time when period begins to run.
150.—Any suit in the name of the Secretary of State for India in Council.	PART X. Sixty years ...	When the right to sue accrued.

Second Division : Appeals.

Description of appeal.	Period of limitation.	Time when period begins to run.
151.—Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days ...	The date of the decree appealed against.
152.—Under the Code of Criminal Procedure to any Court other than the High Court.	Do. ...	The date of the sentence or order appealed against.
153.—Under the same Code to the High Court.	Sixty days ...	Do.

First Division : Suits—(Concluded.)

Description of suit.	Period of limitation.	Time from which period begins to run.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	PART X. Sixty years ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

Second Division : Appeals.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days ...	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay, in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.
152.—Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days...	The date of the decree or order appealed against.
153.—Under the same Code, Section 601, to a High Court.	Do. ...	The date of the order refusing the certificate.
154.—Under the Code of Criminal Procedure to any Court other than a High Court.	Do. ...	The date of the sentence or order appealed against.
155.—Under the same Code to a High Court except in the cases provided for by No. 150 and No. 157.	Sixty days ...	Do.

Second Division : Appeals—(Concluded.)

Description of appeal.	Period of limitation.	Time when period begins to run.
154.—Under the Code of Civil Procedure to the High Court.	Ninety days ...	The date of the decree appealed against.

Third Division : Applications.

Description of application.	Period of limitation.	Time when period begins to run.
155.—Under the Code of Civil Procedure to set aside an award.	Ten days ...	When the award is submitted to the Court and notice of the submission has been given to the persons and in manner prescribed by the High Court.

Second Division : Appeals—(Concluded.)

Description of appeal.	Period of limitation.	Time from which period begins to run.
156.—Under the Code of Civil Procedure to a High Court except in the cases provided for by No. 151 and No. 153.	Ninety days...	The date of the decree or order appealed against.
157.—Under the Code of Criminal Procedure from a judgment of acquittal.	Six months ...	The date of the judgment appealed against.

Third Division : Applications.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under Chapter XXXIX of the Code of Civil Procedure.	Do. ...	When the summons is served.
160.—For an order under Section 629 of the same Code restoring to the file a rejected application for review.	Fifteen days.	When the application for review is rejected.
161.—For the issue of a notice under Section 258 of the same Code, to show cause why the payment or adjustment therein mentioned should not be recorded as certified.*	Twenty days.	When the payment or adjustment is made.

* Act XII of 1879.

Third Division : Applications—(Continued.)

Description of application.	Period of limitation.	Time when period begins to run.
156.—By a plaintiff for an order to set aside a judgment by default.	Thirty days ...	The date of the judgment.
157.—By a defendant for an order to set aside a judgment <i>ex parte</i> .	Do. ...	The date of executing any process for enforcing the judgment.
158.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property and disputing the right of the decree-holder to be put into possession.	Do. ...	The date of the dispossession.
159.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale.	Do. ...	The date of the sale.
160.—Complaining of resistance or obstruction to delivery of possession of immoveable property sold in execution of a decree, or of dispossession in the delivery of possession to the purchaser of such property.	Do. ...	The date of the resistance, obstruction, or dispossession.

Third Division : Applications—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay, in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.
163.—By a plaintiff for an order to set aside a dismissal by default.	Thirty days...	The date of the dismissal.
164.—By a defendant for an order to set aside a judgment <i>ex-parte</i> .	Do. ...	The date of executing any process for enforcing the judgment.
165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Do. ...	The date of the dispossession.
166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court.*	Do. ...	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in	Do. ...	The date of the resistance, obstruction or dispossession.

* Act XII of 1879.

Third Division : Applications—(Continued.)

Description of application.	Period of limitation.	Time when period begins to run.
161.—For re-admission of an appeal dismissed for want of prosecution.	Thirty days ...	The date of the dismissal.
162.—For leave to appeal as a pauper.	Ninety days ...	The date of the decree appealed against.
163.—To a High Court for the admission of special appeal.	Do. ...	Do.

Third Division : Applications—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
the delivery of possession to the decree-holder or the purchaser of such property.		
168.—For re-admission of an appeal dismissed for want of prosecution.	Thirty days...	The date of the dismissal.
169.—For a re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent.	Do. ...	The date of the decree in appeal.
170.—For leave to appeal as a pauper.	Do. ...	The date of the decree appealed against.
171.—Under Sections 363 or 365 of the Code of Civil Procedure by a person claiming to be the legal representative of a deceased plaintiff or appellant.*	Sixty days ...	The date of the plaintiff's or appellant's death.
171-A.—Under Section 366 of the same Code, by the defendant. †	Do. ...	The sixtieth day from the date of the plaintiff's death.
171-B.—Under Section 368 of the same Code, to have the representative of a deceased defendant made defendant.†	Sixty days ...	The date of the defendant's death.
171-C.—Under Section 371 of the same Code for an order to set aside an order for abatement or dismissal.†	Do. ...	The date of the order for abatement or dismissal.
172.—By a purchaser at an execution-sale to set aside the sale on ground that the person whose interest in	Do. ...	The date of the sale.

* Act XII of 1879.

† Act VIII of 1880.

Third Division : Applications—(Continued.)

Description of application.	Period of limitation.	Time when period begins to run.
164.—For a review of judgment.	Ninety days ...	The date of the decree.
165.—Under the Code of Civil Procedure, section three hundred and twenty-seven, that an award be filed in Court.	Six months ...	The date of the award.
166.—For the execution of a decision (other than a decree or order passed in a regular suit or an appeal) of a Civil Court or of a Revenue Court.	One year ...	The date of the decision, or of taking some proceeding to enforce or keep in force the decision.
167.—For the execution of a decree or order of any Civil Court not provided for by No. 169.	Three years ...	The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the Appellate Court, or (where there has been a review of judgment) the date of the decision passed on the review,

Third Division: Applications—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
the property purported to be sold had no saleable interest therein.		
173.—For a review of judgment, except in the cases provided for by No. 162.	Ninety days...	The date of the decree or order.
174.—By a creditor of an insolvent judgment-debtor under Section 353 of the Code of Civil Procedure.	Do. ...	The date of the publication of the schedule.
175.—For payment of the amount of a decree by instalments.	Six months ...	The date of the decree.
176.—Under the Code of Civil Procedure, Section 516 or 525, that an award be filed in Court.	Do. ...	The date of the award.
177.—For the admission of, an appeal to Her Majesty in Council.	Do. ...	The date of the decree appealed against.
178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, Section 230.	Three years...	When the right to apply accrues.
179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, Section 230.	Do; or where a certified copy of the decree or order has been registered, six years.	1 The date of the decree or order, or 2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or, 3 (where there has

Third Division: Applications.— Continued)

Description of application.	Period of limitation.	Time when period begins to run.
<p>168.—For the execution of any such decree or order of which a certified copy has been registered under the Indian Registration Act.</p>	<p>Six years ...</p>	<p>or (where the application next hereinafter mentioned has been made) the date of applying to the court to enforce, or keep in force, the decree or order, or (where the notice next hereinafter made has been issued) the date of issuing a notice under the Code of Civil Procedure, section two hundred and sixteen, or (where the application is to enforce payment of an instalment which the decree directs to be paid at a specified date) the date so specified.</p> <p>The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the Appellate Court, or (where there has been a review of judgment) the date of the decision passed on the review.</p>

Third Division : Applications—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
		<p>been a review of judgment) the date of the decision passed on the review, or</p> <p>4 (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper court for execution, or to take some step in aid of execution, of the decree or order, or</p> <p>5 (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248, or</p> <p>6 (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.*</p> <p><i>Explanation I.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this Number</p>

* Act XII of 1879.

Third Division: Applications—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
		<p>shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives shall take effect against them all.</p>

Third Division : Applications—(Concluded.)

Description of application.	Period of limitation.	Time when period begins to run.
<p>169.—To enforce a judgment, decree or order of any court established by Royal Charter in the exercise of its ordinary original civil jurisdiction.</p>	<p>Twelve years ...</p>	<p>When a present right to enforce the judgment, decree or order accrued to some person capable of releasing the right : Provided that, when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.</p>

Third Division : Applications.—(Concluded)

Description of application.	Period of limitation.	Time from which period begins to run.
180.—To enforce a judgment, decree or order of any court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.	Twelve years.	<p><i>Explanation II.</i>—"Proper Court" means the court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.</p> <p>When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right :</p> <p>Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.</p>

LIMITATION OF SUITS.

ACT No. XIV OF 1859.

(Received the Assent of the Governor-General on the 4th May, 1859.)

AN ACT TO PROVIDE FOR THE LIMITATION OF SUITS.

WHEREAS it is expedient to amend and consolidate the laws relating to the
Preamble. limitation of suits ; it is enacted as follows :

I. No suit shall be maintained in any Court of Judicature within any part of
the British territories in India in which this Act shall
Limitation of Suits. be in force, unless the same is instituted within the
period of limitation hereinafter made applicable to a suit of that nature, any Law or
Regulation to the contrary notwithstanding ; and the periods of limitation, and the
suits to which the same respectively shall be applicable, shall be the following that
is to say :—

1. To suits to enforce the right of pre-emption, whether the same is founded
on law or general usage or on special contract, the
Limitation of 1 year. period of one year, to be computed from the time at
Pre-emption suits. which the purchaser shall have taken possession
under the sale impeached.

2. To suits for pecuniary penalties or forfeitures for the breach of any Law or
Regulation ; to suits for damages for injury to the
Limitation of 1 year. person and personal property, or to the reputation ;
Suits for damages, summary suits, &c. to suits for damages for the infringement of copy-
right, or of any exclusive privilege ; to suits to recover the wages of servants, arti-
zans, or laborers, the amount of tavern bills or bills for board and lodging or lodging
only ; and to summary suits before the Revenue Authorities under Regulation V,
1822, of the Madras Code—the period of one year from the time the cause of action
arose.

3. To suits to set aside the sale of any property, moveable or immoveable, sold
under an execution of a decree of any Civil Court not
Limitation of 1 year. established by Royal Charter when such suit is main-
Suits to set aside sales under tainable ; to suits to set aside the sale of any prop-
decrees or for arrears of Govern- erty, moveable or immoveable, for arrears of Govern-
ment Revenue, &c. ment Revenue or other demand recoverable in like manner ; to suits by a Putneedar

or the proprietor of any other intermediate tenure saleable for current arrears of rent, or other person claiming under him, to set aside the sale of any Putnee Talook or such other tenure sold for current arrears of rent; to suits to set aside the sale of any property, moveable or immoveable, sold in pursuance of any decree or order of a Collector or other Officer of Revenue—the period of one year from the date at which such sale was confirmed or would otherwise have become final and conclusive if no such suit had been brought.

4. To suits to set aside any attachment, lease, or transfer of any land or interest in land by the Revenue Authorities for arrears of

Limitation of 1 year.

Suits to set aside attachments, &c., by Revenue Authorities for arrears of Government Revenue.

Government Revenue, or to recover any money paid under protest in satisfaction of any claim made by the Revenue Authorities on account of arrears of

revenue or demands recoverable as arrears of revenue—one year from the date of such attachment, lease, or transfer, or of such payment, as the case may be.

5. To suits to alter or set aside summary decisions and orders of any of the

Limitation of 1 year.

Suits to set aside summary decisions, &c.

Civil Courts not established by Royal Charter, when such suit is maintainable—the period of one year from the date of the final decision, award, or order in the case.

6. To suits brought by any person to contest the justice of an award which

Limitation of 3 years.

Suits to contest certain awards.

shall have been made under Regulation VII, 1822, Regulation IX, 1825, and Regulation IX, 1833, of the Bengal Code, or to recover any property comprised

in such award—the period of three years from the date of the final award or order in the case.

7. To suits by any party bound by any order respecting the possession of property made under Clause 2, Section 1, Act XVI of

Limitation of 3 years.

Suits to recover property comprised in an order made under Clause 2, Section 1, Act XVI of 1838, or Act IV of 1840.

such party, for the recovery of the property comprised in such order—the period of three years from the date

of the final order in the case.

8. To suits to recover the hire of animals, vehicles, boats, or household furniture; or the amount of bills for any articles sold by

Limitation of 3 years.

Suits for goods sold by retail, &c.

retail; and to all suits for the rents of any buildings or lands (other than summary suits before the Revenue Authorities under Regulation V, 1822, of the Madras Code)—the period of three

years from the time the cause of action arose.

9. To suits brought to recover money lent or interest, or for the breach of any

Limitation of 3 years.

Suits for money lent or interest or for breach of contract where no written contract exists.

contract—the period of three years from the time when the debt became due or when the breach of contract in respect of which the suit is brought first took place, unless there is a written engagement to pay the money

lent or interest, or a contract in writing signed by the party to be bound thereby or by his duly authorized agent.

10. To suits brought to recover money lent or interest, or for the breach of any

Limitation of 3 years.

Suits for the same where there is a written contract which has not been registered within six months.

contract in cases in which there is a written engagement or contract and in which such engagement or contract could have been registered by virtue of any law or Regulation in force at the time and place of the

execution thereof—the period of three years from the time when the debt became due or when the breach of contract in respect of which the action is brought first took place, unless such engagement or contract shall have been registered within six months from the date thereof.

11. To suits in cases governed by English law upon all debts and obligations of record and specialities ; and to suits for the recovery of any legacy—the period of twelve years from the

Limitation of 12 years.

Suits for speciality debts and legacies.

time the cause of action arose.

12. To suits for the recovery of immoveable property or of any interest in immoveable property to which no other provision of this

Limitation of 12 years.

Suits for immoveable property.

Act applies—the period of twelve years from the time the cause of action arose.

13. To suits to enforce the right to share in any property moveable or immoveable on the ground that it is joint-family property ;

Limitation of 12 years.

Suits for shares in joint family property and for maintenance.

and to suits for the recovery of maintenance, where the right to receive such maintenance, is a charge on the inheritance of any estate—the period of twelve years

from the death of the persons from whom the property alleged to be joint is said to have descended, or on whose estate the maintenance is alleged to be a charge ; or from the date of the last payment to the plaintiff or any person through whom he claims, by the person in the possession or management of such property or estate on account of such alleged share, or on account of such maintenance, as the case may be.

14. To suits by the proprietor of any land or by any person claiming under him for the resumption or assessment of any Lakheraj or

Limitation of 12 years.

Suits to resume or assess Lakheraj or rent-free land.

rent-free land—the period of twelve years from the time when the title of the person claiming the right to resume and assess such lands, or of some person under whom he claims first accrued.

Provided if the land has been held rent-free from the time of the permanent settlement.

Provided that in estates permanently settled no such suit, although brought within twelve years from the time when the title of such person first accrued, shall

be maintained, if it is shown that the land has been held Lakheraj or rent-free from the period of the permanent settlement.

15. To suit against a depository, pawnee, or mortgagee of any property move-

Limitation for 30 and 60 years respectively.

Suits against depositories, pawnees, or mortgagees to recover immoveable property.

able or immoveable for the recovery of the same—a period of thirty years if the property be moveable and sixty years if it be immoveable, from the time of the deposit, pawn, or mortgage; or if in the meantime an acknowledgment of the title of the depositor, pawnor, or mortgagor, or of his right of redemption, shall have been given in writing signed by the depository, pawnee, or mortgagee or some person claiming under him, from the date of such acknowledgment in writing.

16. To all suits for which no other limitation is hereby expressly provided

Limitation of 6 years applicable to all suits not especially provided for.

—the period of six years from the time the cause of action arose.

II. No suit against a trustee in his life-time and no suits against his represen-

Suits against trustees and their representatives for breach of trust, &c.

tatives for the purpose of following in their hands the specific property which is the subject of the trust, shall be barred by any length of time; but no suit to

make good the loss occasioned by a breach of trust out of the general estate of a deceased trustee shall be maintained in any of the said Courts unless the same is instituted within the proper period of limitation according to the last preceding

Proviso.

section, to be computed from the decease of such trustee; provided that nothing herein contained shall prevent a co-trustee from enforcing against the estate of a deceased trustee, any claim for contribution, if he shall institute a suit for that purpose within six years after such right of contribution shall have arisen.

III. When, by any law now or hereafter to be in force, a shorter period of limi-

Shorter periods of limitation, if prescribed by particular Acts to prevail.

tation than that prescribed by this Act is specially prescribed for the institution of a particular suit, such shorter limitation shall be applied notwithstanding

this Act.

IV. If in respect of any legacy or debt, the person who, but for the law of

Revival of right to sue by admission in writing.

limitation, would be liable to pay the same, shall have admitted that such debt or legacy or any part thereof is due, by an acknowledgment in writing signed by him, a new period of limitation,

Proviso.

according to the nature of the original liability, shall be computed from the date of such admission; provided that if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them.

V. In suits for the recovery from the purchaser or any person claiming under

Computation of period of limitation in suits to recover property purchased from depositories, pawnees, or mortgagees.

Proviso.

him of any property purchased *bona fide* and for valuable consideration from a trustee, depository, pawnee or mortgagee, the cause of action shall be deemed to have arisen, at the date of the purchase.

Provided that in the case of purchase from a depositary, pawnee, or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 15, Section 1.

VI. In suits in the Courts established by Royal Charter by a mortgagee to recover from the mortgagor the possession of the immoveable property mortgaged, the cause of action shall be deemed to have arisen from the latest date at which any portion of principle money or interest was paid on account of such mortgage debt.

Computation of period of limitation in suits in Supreme Courts by mortgagee to recover immoveable property mortgaged.

VII. In suits to avoid incumbrances or under-tenures in an estate sold for arrears of Government Revenue due from such estate, or in a Putnee Talook or other saleable tenure sold for arrears of rent which by virtue of such sale becomes freed from incumbrances and under-tenures, the cause of action shall be deemed to have arisen at the time when the sale of the estate, talook, or tenure became final and conclusive.

Computation of period of limitation in suits to avoid incumbrances or under-tenures in estates sold for arrears of Government Revenue.

VIII. In suits for balances of accounts current between merchants and traders who have had mutual dealings, the cause of action shall be deemed to have arisen at, and the period of limitation shall be computed from the close of the year in the accounts of which there is the last item admitted or proved indicating the continuance of mutual dealings, such year to be reckoned as the same is reckoned in the accounts.

Computation of period of limitation in suits between merchants for balances of accounts current.

IX. If any person entitled to a right of action shall by means of fraud have been kept from the knowledge of this having such right or of the title upon which it is founded, or if any document necessary for establishing such right shall have been fraudulently concealed, the time limited for commencing the action against the person guilty of the fraud or accessory thereto, or against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be reckoned from the time when the fraud first became known to the person injuriously affected by it or when he first had the means of producing or compelling the production of the concealed document.

Computation of period of limitation in case of concealed fraud.

X. In suits in which the cause of action is founded on fraud, the cause of action shall be deemed to have first arisen at the time which such fraud shall have been first known by the party wronged.

Computation of period of limitation in suits where the cause of action is founded on fraud.

XI. If at the time when the right to bring an action first accrues the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall

Computation of period of limitation in case of legal disability.

have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.

XII. The following persons shall be deemed to be under legal disability within the meaning of the last preceding section—married women in cases to be decided by English law, minors, idiots, and lunatics.

XIII. In computing any period of limitation prescribed by this Act, the time during which the defendant shall have been absent out of the British territories in India shall be excluded from such computation unless service of a summons to appear and answer in the suit can during the absence of such defendant be made in any mode prescribed by law.

XIV. In computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, *bona fide* and with due diligence, in any Court of Judicature which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause included the time during which such appeal, if any, has been pending, shall be excluded from such computation.

XV. If any person shall without his consent have been dispossessed of any immovable property otherwise than by due course of law, such person or any person claiming through him shall in a suit brought to recover possession of such property be entitled to recover possession thereof, notwithstanding any other title that may be set up in such suit provided that the suit be commenced within six months from the time of such dispossession. But nothing in this section shall bar the person from whom such possession shall have been so recovered or any other person instituting a suit to establish his title to such property, and to recover possession thereof within the period limited by this Act. [Modified by Act XXIII, 1861, Section 26.]

XVI. Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of any Court established by Royal Charter in refusing equitable relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

XVII. This Act shall not extend to any public property or right, nor to any

Act not to extend to public property nor to suits for the recovery of public claims.

suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.

XVIII. All suits that may be now pending or that shall be instituted within

Act not to apply to suits now pending or to suits instituted within two years.

Suits afterwards instituted to be governed by this Act.

the period of two years from the date of the passing of this Act shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be

instituted after the expiration of the said period shall be governed by this Act and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

XIX. No proceeding shall be taken to enforce any judgment, decree, or order

Proceedings for enforcing judgments, &c., of Supreme Courts to be taken within twelve years.

of any Court established by Royal Charter but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same unless in the meantime such judgment, decree, or order shall have been duly revived or some part of the principal

money secured by such judgment, decree, or order or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable or his agent, to the person entitled thereto or his agent; and in any such case no proceeding shall be brought to enforce the said judgment, decree, or order, but within twelve years after such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be, provided that for three years next after

Proviso as to judgment now in force.

the passing of this Act, every judgment, decree, and order which may be in force at the date of the passing of this Act, shall be governed by the law now in force,

anything therein contained notwithstanding.

XX. No process of execution shall issue from any Court not established by

Time for enforcing execution of judgment, &c., of a Civil Court not established by Royal Charter.

Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree or order, or to keep the same in force, within three years next

preceding the application for such execution.

XXI. Nothing in the preceding section shall apply to any judgment, decree, or

Preceding section not to apply to judgments, &c., in force at the passing of this Act.

order in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of

execution thereon, or within three years next after the passing of this Act, whichever shall first expire.

XXII. No process of execution shall issue to enforce any summary decision or award of any of the Civil Courts not established by Royal Charter, or of any Revenue Authority, unless some proceeding shall have been taken to enforce such decision or award, or to keep the same in force, within one year next preceding the application for such execution.

XXIII. Nothing in the preceding section shall apply to any summary decision or award in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon or within two years next after the passing of this Act, whichever shall first expire.

XXIV. This Act shall take effect throughout the Presidencies of Bengal, Madras, and Bombay, including the Presidency Towns and the Straits' Settlement; but shall not take effect in any Non-regulation Province or place until the same shall be extended thereto by public notification by the Governor-General in Council or by the Local Government to which such Province or place is subordinate. Whenever this Act shall be extended to any Non-regulation Province or place by the Governor-General in Council, or by the Local Government to which such Province or place is subordinate, all suits which within such Province or place shall be pending at the date of such notification or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

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| For admitting, after time court should record reason ... ..                                                                                                    | v               | l     | 33     |
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| Grounds for admitting, may be examined by High Court in 2nd appeal ... ..                                                                                      | v               | n     | 33     |
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| In District Judge's refusal to admit, after time B. H. declined interference ... ..                                                                            | v               | p     | 34     |
| — held as preferred when memo. was first presented and not when represented on return for insufficiency of stamps without fixing time ... ..                   | v               | q     | 34     |
| So an, memo. represented on return for amendment without fixing time ... ..                                                                                    | v               | r     | 34, 35 |
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| — by one memo. against 1st decree after time, and against 2nd decree on review admitted by the Lower Court* was rejected by the High Court as irregular ... .. | v               | v     | 36     |
| Words, "or application" were not included in section 13 of IX of 1871 ... ..                                                                                   | xii             | a     | 84     |
| In case of, to P. C. time runs from judgment date and not from dismissal of review ... ..                                                                      | xii             | b     | 85     |
| — rejected as presented out of time on plaintiff failing to account for delay ... ..                                                                           | xii             | c     | 87     |



have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.

XII. The following persons shall be deemed to be under legal disability within the meaning of the last preceding section—married women in cases to be decided by English law, minors, idiots, and lunatics.

What person to be deemed to be under legal disability under preceding section.

XIII. In computing any period of limitation prescribed by this Act, the time during which the defendant shall have been absent out of the British territories in India shall be excluded from such computation unless service of a summons to appear and answer in the suit can during the absence of such defendant be made in any mode prescribed by law.

Computation of period of limitation in case of absence of defendant.

XIV. In computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, *bond fide* and with due diligence, in any Court of Judicature which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause included the time during which such appeal, if any, has been pending, shall be excluded from such computation.

Computation of period of limitation in case of suit prosecuted *bond fide*, but in wrong Court.

XV. If any person shall without his consent have been dispossessed of any immoveable property otherwise than by due course of law, such person or any person claiming through him shall in a suit brought to recover possession of such property be entitled to recover possession thereof, notwithstanding any other title that may be set up in such suit provided that the suit be commenced within six months from the time of such dispossession. But nothing in this section shall bar the person from whom such possession shall have been so recovered or any other person instituting a suit to establish his title to such property, and to recover possession thereof within the period limited by this Act. [Modified by Act XXIII, 1861, Section 26.]

Person unlawfully dispossessed of immoveable property may recover possession, notwithstanding any title that may be set up.

Suit for dispossession to be brought within six months.

Suit to establish title not to be affected.

XVI. Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of any Court established by Royal Charter in refusing equitable relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

Act not to interfere with equitable jurisdiction of Supreme Courts.

**XVII.** This Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.

Act not to extend to public property nor to suits for the recovery of public claims.

**XVIII.** All suits that may be now pending or that shall be instituted within the period of two years from the date of the passing of this Act shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted after the expiration of the said period shall be governed by this Act and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

Act not to apply to suits now pending or to suits instituted within two years.  
Suits afterwards instituted to be governed by this Act.

**XIX.** No proceeding shall be taken to enforce any judgment, decree, or order of any Court established by Royal Charter but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same unless in the meantime such judgment, decree, or order shall have been duly revived or some part of the principal money secured by such judgment, decree, or order or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable or his agent, to the person entitled thereto or his agent; and in any such case no proceeding shall be brought to enforce the said judgment, decree, or order, but within twelve years after such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be, provided that for three years next after the passing of this Act, every judgment, decree, and order which may be in force at the date of the passing of this Act, shall be governed by the law now in force, anything therein contained notwithstanding.

Proceedings for enforcing judgments, &c., of Supreme Courts to be taken within twelve years.

Proviso as to judgment now in force.

**XX.** No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree or order, or to keep the same in force, within three years next preceding the application for such execution.

Time for enforcing execution of judgment, &c., of a Civil Court not established by Royal Charter.

**XXI.** Nothing in the preceding section shall apply to any judgment, decree, or order in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon, or within three years next after the passing of this Act, whichever shall first expire.

Preceding section not to apply to judgments, &c., in force at the passing of this Act.

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| <b>Assessment—</b>                                                                                                                      |                 |       |          |
| Assessment of rent-free land, suit for                                                                                                  | 180             | ...   | 501      |
| Twelve years' possession by one not claiming under<br>grantee bars right to assess land granted to an office                            | 130             | b     | 501      |
| Suit to assess brought 12 years after decree declaring<br>plaintiff's right to assess held not barred                                   | 130             | c     | 501      |
| <b>Assets—</b>                                                                                                                          |                 |       |          |
| Suit for refund of, distributed by executor or adminis-<br>trator                                                                       | 43              | ...   | 356      |
| — mean not merely, in the hands of the executor, but<br>which could be got in and applied to payment of<br>legacies                     | 123             | e     | 486, 487 |
| — by annuitant's heir claiming share under a will<br>and also for a share of property undisposed of                                     | 123             | f     | 487      |
| <b>Assignee—</b>                                                                                                                        |                 |       |          |
| Assignee of minors by private or court sale is not<br>entitled to the exemptions allowed to minors                                      | vii             | h     | 45       |
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| Interest of an expectant heir is not liable to                                                                                          | 141             | e     | 545      |
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| Attorney's suit for costs, &c., in the absence of an express<br>agreement as to time                                                    | 84              | ...   | 417      |
| — improperly discontinuing business or suit has<br>no right to sue for costs                                                            | 84              | a     | 418      |
| Suit brought in 1875 by solicitor engaged in 1871 to<br>enforce decree which was settled out of court in<br>1872, held not barred by 84 | 84              | b     | 418      |
| Attorney's application calling on his client to show<br>cause why he should not pay bill of costs is not<br>affected by limitation      | 84              | c     | 418      |
| Attorney's suit does not terminate until decree is issued<br>with costs taxed                                                           | 84              | c     | 419      |
| <b>Auction purchaser—</b>                                                                                                               |                 |       |          |
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| —'s suit for compensation awarded to mortgagor<br>under the Land Acquisition Act, time runs from<br>date of knowledge                   | 95              | g     | 437      |
| <b>Auction Sale—</b>                                                                                                                    |                 |       |          |
| Cannot be set aside though on debtor's appeal exe-<br>cution was held barred                                                            | 165             | a     | 615      |
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| Application to set aside, for irregularity                                                                                              | 166             | ...   | 616      |
| Article 166 applies only to applications under section<br>311 or 294                                                                    | 166             | ...   | 616      |
| Decree-holder includes one entitled to rateable distri-<br>bution                                                                       | 166             | ...   | 616      |
| Failure to give notice under section 248, is irregu-<br>larity invalidating subsequent proceeding                                       | 166             | a     | 616      |
| Court can set aside its irregular proceeding if third<br>parties are not affected                                                       | 166             | a     | 616      |

# I N D E X.

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## **Award—**

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| Under Act XXIII of 1863, suits to contest, of Revenue Board                                                             | 1               | ...   | 271   |
| Suit under Article 1, to be brought in court specially constituted under XXIII of 1863                                  | 1               | a     | 271   |
| Court could not extend the period of 30 days before XV of 1877                                                          | 1               | b     | 271   |
| Under certain Bengal Regulations, suit to contest                                                                       | 45              | ...   | 358   |
| Regulations referred to in Article 45 relate to settlement of lands                                                     | 45              | a     | 358   |
| A person whether bound or not by, cannot sue to rectify or set it aside 3 years after its date                          | 45              | c     | 358   |
| Collector's adjudication under section 20 of Regulation VII of 1822, upon a claim to proprietary rights of lands, is an | 45              | d     | 359   |
| But a Collector's declaration <i>proprio motu</i> that a farmer is proprietor, and he be so registered, is not an       | 45              | d     | 359   |
| An, supposes contention between parties and decision after investigation                                                | 45              | e     | 359   |
| Settlement Officer's disposal on the evidence recorded by his assistant, is not an                                      | 45              | f     | 360   |
| Decision of title by settlement officer under Act XIX of 1873, does not fall under 45                                   | 45              | g     | 360   |
| Suit to recover property comprised in                                                                                   | 46              | ...   | 361   |
| — does not bind purchaser at Revenue sale                                                                               | 46              | a     | 361   |
| — by person in possession under an, for confirmation of title is not suit for property                                  | 46              | b     | 361   |
| Plaintiff dispossessed after, suing for possession has 12 years                                                         | 46              | c     | 362   |
| A suit for possession, three years after, without alleging dispossession since, held barred                             | 46              | d     | 362   |
| Limitation runs from the date of final order in appeal though it was dismissed without investigation into the merits    | 46              | j     | 365   |
| Where one of 2 parties whose interest are distinct appeals, limitation runs against the other from date of the          | 46              | k     | 365   |
| — is placed under the same footing as contracts for the purposes of chapter ii of the Specific Relief Act               | 113             | h     | 455   |
| Suit on a registered, for money is one for specific performance                                                         | 113             | h     | 455   |
| Application to set aside                                                                                                | 158             | ...   | 609   |
| — under section 522 to set aside an, on any ground named in section 521                                                 | 158             | a     | 609   |
| Defendant not contesting, on any of these grounds, is not precluded from appealing                                      | 158             | a     | 610   |
| Application to file an, in court                                                                                        | 176             | ...   | 631   |
| "Date" does not mean date that award was written, but date that it was given to the parties                             | 176             | a     | 631   |
| Arbitrator handing in an award to court is not an application                                                           | 176             | b     | 631   |

## **Balance—**

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| Balance of advance in payment of goods to be delivered, suit for                                   | 51 | ... | 372 |
| What is                                                                                            | 51 | a   | 372 |
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| <b>Bankruptcy—</b>                                                                                                             |                 |       |       |
| Can time occupied by proceedings in, be excluded under<br>sec. 15 ... ..                                                       | xv              | j     | 119   |
| C. P. C. of 1882 does not provide for stay of legal pro-<br>ceedings during pendency of application for insol-<br>vency ... .. | xv              | j     | 120   |
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| <b>Benamidar—</b>                                                                                                              |                 |       |       |
| Is not a trustee ... ..                                                                                                        | iii             | ...   | 21    |
| <b>Bengal Regulations—</b>                                                                                                     |                 |       |       |
| Suit to contest awards under certain ... ..                                                                                    | 45              | ...   | 359   |
| <b>Bill of Exchange—</b>                                                                                                       |                 |       |       |
| Bill of Exchange or promissory note payable at a fixed<br>time after date ... ..                                               | 69              | ...   | 403   |
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| — defined by sec. 5 Act XXVI of 1881 ... ..                                                                                    | 69              | a     | 403   |
| Suit on, payable at sight or after sight, but not at a<br>fixed time ... ..                                                    | 70              | ...   | 403   |
| Suit on, accepted payable at a particular date ... ..                                                                          | 71              | ...   | 403   |
| — or promissory note payable at a fixed time<br>after sight or demand ... ..                                                   | 72              | ...   | 403   |
| — English cases on ... ..                                                                                                      | 72              | b     | 404   |
| — or pro-note payable on demand and not accom-<br>panied by writing restraining or postponing right<br>to sue ... ..           | 73              | ...   | 404   |
| By payee against drawer of, dishonoured by non-accep-<br>tance ... ..                                                          | 78              | ...   | 414   |
| Under English Law, time runs from notice of non-accep-<br>tance ... ..                                                         | 78              | a     | 414   |
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| <b>Board of Revenue—</b>                                                                                                       |                 |       |       |
| Suit to contest award of, ... ..                                                                                               | 1               | ...   | 271   |
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| — may be creditor's belief that a court has juris-<br>diction ... ..                                                           | xiv             | f     | 99    |
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| — of contract (see contract) ... ..                                                                                            | —               | —     | —     |
| — of promise (see promise) ... ..                                                                                              | —               | —     | —     |
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| — resulting from one cause of action must be recovered once for all ... ..                                                                    | xxiv            | d     | 208, 209 |
| Though the rule that plaintiff should recover by one suit past and future, may not insure perfect justice, it is a wholesome principle ... .. | xxiv            | d     | 209      |
| Effect of awarding prospective ... ..                                                                                                         | xxiv            | g     | 210      |
| To suit for, for wrongful detention of grain by Magistrate on defendant's complaint, time runs from date of complaint or attachment ... ..    | 36              | e     | 351      |
| Suit for, for injury to moveable property while under attachment falls under 42 ... ..                                                        | 42              | b     | 356      |
| <b>Death—</b>                                                                                                                                 |                 |       |          |
| Effect of, before right to sue accrues ... ..                                                                                                 | xvii            | ...   | 122      |
| — of person who, if living, would have a right to sue or make application ... ..                                                              | xvii            | ...   | 122      |
| — of person against whom, if living, right to sue or make application would have accrued ... ..                                               | xvii            | ...   | 122      |
| — of original plaintiff or defendant ... ..                                                                                                   | xxii            | ...   | 192      |
| Suit against person whose wrongful act causes the, of another person ... ..                                                                   | 21              | a     | 335      |
| <b>Debt—</b>                                                                                                                                  |                 |       |          |
| — in sections 20, 21 of IX of 1871, does not include judgment ... ..                                                                          | xix             | 2-1   | 170      |
| <b>Debtor—</b>                                                                                                                                |                 |       |          |
| — might renounce the benefit of limitation and promise to pay barred debts ... ..                                                             | xix             | b     | 153      |
| This principle prevailed even before the Contract Act...                                                                                      | xix             | b     | 153      |
| <b>Decision—</b>                                                                                                                              |                 |       |          |
| Erroneous, that an application is not barred, is not a nullity until set aside ... ..                                                         | iv              | g     | 28       |
| — in any proceeding other than a suit, to set aside ... ..                                                                                    | 13              | ...   | 319      |
| To decide a suit falls within 13, the test is whether summary decision could be set up as bar to suit ...                                     | 13              | b     | 320      |
| — under sec. 9 of Specific Relief Act does not bar suit on title ... ..                                                                       | 13              | c     | 321      |
| <b>Declaration—</b>                                                                                                                           |                 |       |          |
| Suit for, is substantially a suit for possession ...                                                                                          | 144             | o     | 563      |
| <b>Decree—</b>                                                                                                                                |                 |       |          |
| — is virtually altered by order under section 210 directing payment by instalment ... ..                                                      | 179             | s     | 653      |

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**Decree—continued.**

|                                                                                                                                               |     |   |     |
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| C. H. Court registering parties' agreement for payment by instalments and striking out proceedings amount to a decree passed on that date ... | 179 | g | 653 |
| Order rejecting appeal memo. is a, appealable ...                                                                                             | xiv | f | 27  |

**Decree-holder—**

|                                                                            |     |     |     |
|----------------------------------------------------------------------------|-----|-----|-----|
| — withdrawing application is not entitled to the benefit of section 14 ... | xiv | 2-c | 109 |
| — is not affected by injunction staying execution pending appeal ...       | xv  | i   | 119 |
| — includes one entitled to ratable distribution under sec. 295 ...         | 166 | ... | 616 |

**Default—**

|                                           |     |     |     |
|-------------------------------------------|-----|-----|-----|
| Application to set aside dismissed by ... | 163 | ... | 612 |
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**Defect of jurisdiction—**

|                                                                        |     |   |    |
|------------------------------------------------------------------------|-----|---|----|
| — would not include plaintiff's neglect ...                            | xiv | g | 99 |
| Inability of Court must be something over which no one has control ... | xiv | g | 99 |

**Defendant—**

|                                                                                                                            |       |     |     |
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| — may execute a partition decree avoiding distinct share to each share holder ...                                          | 179   | k   | 649 |
| — urging in former suit a set off comes under claimant, &c., engaged in prosecuting suit in sec. 14 of Act XIV of 1859 ... | xiv   | a   | 97  |
| Such claim should have been rejected for want of jurisdiction ...                                                          | xiv   | b   | 97  |
| Application by plaintiff to bring in representative of the deceased ...                                                    | 171-B | ... | 621 |

**Delay—**

|                                                     |    |     |     |
|-----------------------------------------------------|----|-----|-----|
| — in delivering goods, suit against carrier for ... | 31 | ... | 304 |
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**Delivery—**

|                          |    |     |     |
|--------------------------|----|-----|-----|
| — of goods, time for ... | 51 | ... | 372 |
|--------------------------|----|-----|-----|

**Demand—**

|                                                                                                                                       |    |     |     |
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| Suit for money payable on ...                                                                                                         | 59 | ... | 377 |
| English Law on debt payable on ...                                                                                                    | 59 | b   | 378 |
| — must be made before promise can be enforced when promise is made in consideration of some collateral thing being done on demand ... | 59 | d   | 378 |
| Case where, was held a condition precedent to enforce an agreement ...                                                                | 59 | e   | 379 |
| — is necessary where money is repayable 3 months after demand ...                                                                     | 59 | f   | 379 |
| Admission by payee of payment of interest is evidence of ...                                                                          | 59 | f   | 379 |

**Depositary—**

|                                                                                       |     |     |     |
|---------------------------------------------------------------------------------------|-----|-----|-----|
| Suit against ...                                                                      | 145 | ... | 585 |
| Collector receiving money to meet uncertain demands on account of revenue, is not ... | 145 | b   | 586 |

**Deposits—**

|                                             |    |     |     |
|---------------------------------------------|----|-----|-----|
| Suit for, payable on demand ...             | 60 | ... | 380 |
| Provision for, payable on demand is new ... | 60 | a   | 380 |

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| <b>Deposits—continued.</b>                                                                                                                                           |                 |       |       |
| When money deposited is withdrawable at depositor's pleasure, suit has 3 years from date of ...                                                                      | 60              | b     | 380   |
| "—" refers to cases where money is lodged with another under trust ...                                                                                               | 60              | c     | 381   |
| Suit for money deposited and interest held to be in time as account was a running one and interest was credited yearly ...                                           | 60              | e     | 381   |
| Money deposited in a sealed bag is different ...                                                                                                                     | 60              | f     | 383   |
| Suit for return of, made as returnable on a certain event falls under 62 ...                                                                                         | 62              | b     | 385   |
| —Recoverable in specie falls under 145 ...                                                                                                                           | 145             | a     | 585   |
| — of money or jewel by defendant to stay sale pending appeal, decree-holder's right thereto is not affected even after decree becomes barred ...                     | 179             | m     | 650   |
| <b>Devisee—</b>                                                                                                                                                      |                 |       |       |
| Suit by, for possession of immoveable property ...                                                                                                                   | 140             | ...   | 535   |
| <b>Diligence—(See under Fraud.)</b>                                                                                                                                  |                 |       |       |
| <b>Diluvion—</b>                                                                                                                                                     |                 |       |       |
| Suit for, has 12 years from adverse possession first taken of land reforming on the original site whether or not it is capable of occupation on the date of suit ... | 144             | x     | 569   |
| Diluviated lands reforming on their original side remain the property of the original owner; doctrine in <i>Lopez's case</i> ...                                     | 144             | y     | 569   |
| English Law on the subject ...                                                                                                                                       | 144             | z     | 570   |
| The principle is founded on universal law and justice... Doctrine in <i>Lopez's case</i> inapplicable when title has been acquired by adverse possession ...         | 144             | 2-a   | 570   |
| Submergence after, are to be presumed until contrary is shown ...                                                                                                    | 144             | 2-b   | 572   |
| By "diluviated," plaintiff says the Ganges which swallowed property has again yielded it up ...                                                                      | ...             | ...   | ...   |
| Accretion by alluvion belongs to the owner of the adjoining land ...                                                                                                 | ...             | ...   | ...   |
| Converse of that rule was applied by English Courts, but to what extent that rule would be carried in this country is not determined ...                             | ...             | ...   | ...   |
| <b>Disability—</b>                                                                                                                                                   |                 |       |       |
| Legal, is "minority" or "insanity" or idiocy ...                                                                                                                     | vii             | ...   | 41    |
| — double and successive ...                                                                                                                                          | vii             | ...   | 41    |
| Death of person under ...                                                                                                                                            | vii             | ...   | 41    |
| — of representatives ...                                                                                                                                             | vii             | ...   | 42    |
| Clauses of, do not extend to pre-emption suits ...                                                                                                                   | vii             | ...   | 42    |
| Personal, in sec. 7, has reference to inability in sec. 9... Benefits of, applies also to the period during which disability continues ...                           | vii             | a     | 423   |
| — of one joint-creditor does not suspend limitation when another can give discharge ...                                                                              | xii             | b     | 43    |
| A Hindu suing for money lent during minority by manager is not entitled to the benefit of sec. 8 ...                                                                 | vii             | ...   | 46    |
| Minor plaintiff's brother incompetent to give discharge when loan-bond stood in plaintiff's name ...                                                                 | viii            | a     | 46    |
|                                                                                                                                                                      | viii            | b     | 46    |

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**Disability**—continued.

|                                                      |    |   |    |
|------------------------------------------------------|----|---|----|
| — or inability in sec. 9 must be held to be personal |    |   |    |
| inability affecting plaintiff himself ... ..         | ix | a | 47 |
| — do not affect or qualify sec. 13 ... ..            | ix | a | 47 |

**Discontinuance**—

|                        |      |     |     |
|------------------------|------|-----|-----|
| — of easement ... ..   | xxvi | ... | 215 |
| — of possession ... .. | 142  | ... | 548 |

**Dishonesty**—

|                                                                                                                          |       |   |     |
|--------------------------------------------------------------------------------------------------------------------------|-------|---|-----|
| Dishonesty in obtaining possession will not prevent the possessor from availing himself of the Law of Limitations ... .. | xviii | c | 144 |
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**Dismissal**—

|                                             |     |     |     |
|---------------------------------------------|-----|-----|-----|
| By default, application to set aside ... .. | 169 | ... | 612 |
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**Dispossession**—

|                                                                                                      |     |   |     |
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| Carrying away crops is not, when Kaboolut is for payment of rent ... ..                              | 3   | b | 273 |
| Partial, of a house is ... ..                                                                        | 3   | c | 274 |
| — and discontinuance apply only where owner is deprived of dominion over land or receipt of produce. | 142 | a | 549 |
| Owner permitting another is not discontinuance ...                                                   | 142 | b | 549 |
| Improperly receiving rent due to plaintiff amounts to...                                             | 142 | d | 549 |

**Distress**—

|                                                                                          |    |     |     |
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| Suit for illegal, irregular, or excessive ... ..                                         | 28 | ... | 343 |
| Suit for money paid in excess of what was since fixed in appeal is governed by 62 ... .. | 28 | a   | 343 |

**District Judge**—(*See under C. P. C.*)

|                                                                                                                                                   |      |   |     |
|---------------------------------------------------------------------------------------------------------------------------------------------------|------|---|-----|
| Should take possession of estate of a deceased who is not a Hindu, Budhist, Mahomedan or person exempted from Succession Act ... ..               | xvii | l | 127 |
| — is in no sense representative, but should hand it over ... ..                                                                                   | xvii | l | 127 |
| — had no power to grant probate, &c., to the estate of a deceased native until before Act V of 1881, which can be extended to the Mofussil ... .. | xvii | q | 131 |

**Divorce Act**—

|                                              |   |     |   |
|----------------------------------------------|---|-----|---|
| This Act not applicable to suit under ... .. | i | ... | 5 |
|----------------------------------------------|---|-----|---|

**Document**—

|                                                                                                        |       |     |     |
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| Effect of fraudulently concealing ... ..                                                               | xviii | ... | 136 |
| Case where, was held not necessary and not fraudulently concealed within sec. 9 of the Act of 1859 ... | xviii | q   | 145 |
| Cases in which, would be necessary ... ..                                                              | xviii | q   | 146 |

**Dower**—

|                                                                                                        |     |     |     |
|--------------------------------------------------------------------------------------------------------|-----|-----|-----|
| Suit by Mahomedan for exigible ... ..                                                                  | 103 | ... | 444 |
| Exigible, implies that it may, not that it must, be exacted ... ..                                     | 103 | a   | 444 |
| As to prompt, time does not begin to run before demand or dissolution of marriage ... ..               | 103 | a   | 445 |
| Unambiguous demand by wife and refusal by husband gives cause of action ... ..                         | 103 | b   | 445 |
| Leave to sue as pauper does not amount to demand by action until court's permission is obtained ... .. | 103 | b   | 152 |



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| <b>Dower—continued.</b>                                                                                               |                 |       |          |
| Suit for deferred ... ..                                                                                              | 104             | ...   | 446      |
| Limitation runs for deferred, from dissolution of marriage in the absence of a contract to the contrary ...           | 104             | a     | 446      |
| Terms to which payment to be deferred, may be fixed by contract ... ..                                                | 104             | a     | 446      |
| Wife's heirs' claim for deferred, is money claim founded on husband's contract ... ..                                 | 104             | b     | 446      |
| Wife has no lien on her husband's properties for deferred ... ..                                                      | 104             | b     | 446      |
| <b>Drawer—(See Bill of Exchange, Accommodation Bill.)</b>                                                             |                 |       |          |
| <b>Easement—</b>                                                                                                      |                 |       |          |
| Interpretation of, in Act XV of 1877, is repealed by Act V of 1882 ... ..                                             | iii             | a     | 21       |
| — is defined for Madras, Coorg and Central Provinces by section 4 of Act V of 1882 ... ..                             | iii, xxvi       | a     | 21, 213  |
| — in XV of 1877 has a much more extensive meaning than it bears in English Law ... ..                                 | iii             | b     | 22       |
| — includes prescriptive right of fishery ... ..                                                                       | iii             | c     | 23       |
| Acquisition of right to ... ..                                                                                        | xxvi            | ...   | 213      |
| Twenty years' enjoyment of way or water-course or any water, use of light or air gives absolute right... ..           | xxvi            | ...   | 214      |
| M. H. and C. H. Before IX of 1871, 12 years' enjoyment conferred a right to ... ..                                    | xxvi            | a     | 215, 216 |
| Bombay Regulation V of 1827 required 30 years' enjoyment in the Mofussil ... ..                                       | xxvi            | a     | 216      |
| Twenty years' enjoyment was required in the Presidency Towns ... ..                                                   | xxvi            | a     | 216      |
| Act IX of 1871 fixed 20 years ... ..                                                                                  | xxvi            | a     | 216      |
| Twenty years' appropriation of light and air required to prevent neighbour from blocking up the aperture... ..        | xxvi            | b     | 216      |
| C. H. Under the Indian Act it is not necessary that user should be known to servient-owner ... ..                     | xxvi            | i     | 220, 221 |
| Difference between acquisition of right under the Indian Act and English Prescription Act... ..                       | xxvi            | i     | 222      |
| C. H. Actual user within 2 years next before suit was necessary ... ..                                                | xxvi            | j     | 222, 223 |
| N.-W. P. H. C. non-user even for more than 2 years will not destroy right ... ..                                      | xxvi            | j     | 223      |
| The conflict arose from difficulty of reconciling illustration (b), with last clause of the section ... ..            | xxvi            | j     | 223      |
| Garth C. J. User within 2 years before suit not necessary... ..                                                       | xxvi            | j     | 223      |
| Right to pathway over plaintiff's land created when both belonged to one person is an, of necessity ... ..            | xxvi            | k     | 223      |
| — apparent and continuous would raise a presumption that it passed with defendant's tenement ... ..                   | xxvi            | k     | 223, 224 |
| Case where discontinuance of user of land held to have the effect of preventing acquisition of statutory right ... .. | xxvi            | l     | 224      |
| Mere permission to erect a dam held not to amount to a grant ... ..                                                   | xxvi            | p     | 227      |
| A man licensing an act may seek for relief if unexpected injurious consequences result ... ..                         | xxvi            | p     | 228      |
| — may be created by a contract ... ..                                                                                 | xxvi            | q     | 228      |

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| <b>Easement—continued.</b>                                                                                                                                                                     |                 |       |           |
| Case where agreement was held not revocable at pleasure ... ..                                                                                                                                 | xxvi            | q     | 228       |
| Superior Riparian proprietor's right to drain water was not, within Act IX of 1871 ... ..                                                                                                      | xxvi            | z     | 236       |
| Lower Riparian proprietor blocking up stream could justify it only if he had acquired, to do it ... ..                                                                                         | xxvi            | z     | 236       |
| Right to, goes with property whether sold by owner or court ... ..                                                                                                                             | xxvi            | 2-f   | 239       |
| Such right to go with property must have existed at the time of sale... ..                                                                                                                     | xxvi            | 2-g   | 239       |
| B. H. Right to, could only be acquired either by contract or prescription ... ..                                                                                                               | xxvi            | 2-h   | 240       |
| Every trifling excess in the exercise of a servitude would not justify pulling down building ... ..                                                                                            | xxvi            | 2-j   | 241       |
| Mere permissive possession cannot create a right of ... ..                                                                                                                                     | xxvi            | 2-k   | 241       |
| Right to drain surplus tank water over another's land... ..                                                                                                                                    | xxvi            | 2-k   | 242       |
| Right to burial ground ... ..                                                                                                                                                                  | xxvi            | 2-k   | 242       |
| Upon severance tenements, of necessity or continuous, will pass by implication but, used from time to time will pass only by owner's express language ... ..                                   | xxvi            | 2-m   | 244       |
| Plaintiff by opening channel through Government waste land and then taking Government lease acquires right to the use of flowing water and the area occupied by the channel and its bed ... .. | xxvi            | 2-m   | 243       |
| — under section 26 embraces a <i>profit a prendre</i> ... ..                                                                                                                                   | xxvi            | 2-o   | 244 245 & |
| Can, be acquired against Government or Sovereign by statutory prescription ... ..                                                                                                              | xxvi            | 2-w   | 247       |
| Scotland, C. J. Arbitrary power claimed for Government was not maintainable ... ..                                                                                                             | xxvi            | 2-w   | 253       |
| English case holding that grant from the Crown may be presumed ... ..                                                                                                                          | xxvi            | 2-v   | 254       |
| <b>Enactments—</b>                                                                                                                                                                             |                 |       |           |
| Suit for doing or omitting to do acts in pursuance of ... ..                                                                                                                                   | 2               | ...   | 271       |
| <b>Endowment—</b>                                                                                                                                                                              |                 |       |           |
| No distinction between religious, to a household idol and to one for benefit of general public ... ..                                                                                          | 134             | c     | 520       |
| <b>Enforcement—</b>                                                                                                                                                                            |                 |       |           |
| — of forged instrument ... ..                                                                                                                                                                  | 93              | ...   | 433       |
| <b>Enjoyment—</b>                                                                                                                                                                              |                 |       |           |
| Long, was held to refer to legal origin ... ..                                                                                                                                                 | xxvi            | x     | 284       |
| <b>Equitable right—</b>                                                                                                                                                                        |                 |       |           |
| Suit for sale proceeds which plaintiff has an, to follow in defendant's hands falls under 62 ... ..                                                                                            | 62              | n     | 390       |
| So is a suit against trustee for possession of share and for account and profits ... ..                                                                                                        | 62              | o     | 390       |
| <b>Estoppel—</b>                                                                                                                                                                               |                 |       |           |
| P. C. Application for postponement of sale occasions no ... ..                                                                                                                                 | 179             | 3-q   | 676       |
| <b>Evidence—</b>                                                                                                                                                                               |                 |       |           |
| Para. 2 of section 19 refers to oral, but not to secondary. To exclude secondary, of lost acknowledgment would produce serious consequence ... ..                                              | xix             | d     | 154       |
| — produce serious consequence ... ..                                                                                                                                                           | xix             | d     | 154       |

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| <b>Evidence—continued.</b>                                                                                       |                 |       |       |
| Oral, &c. in para. 2, section 19, do not override general rule as to secondary ...                               | xix             | d     | 155   |
| English case on parole, to prove date of written acknowledgment and contents of lost acknowledgment ...          | xix             | e     | 155   |
| Secondary, may be given of an acknowledgment lost while in court ...                                             | xxviii          | g     | 268   |
| Admission by payee of payment of interest is, of demand ...                                                      | 59              | f     | 379   |
| <b>Excess payment—</b>                                                                                           |                 |       |       |
| Suit for, over what was reduced in appeal falls under 62                                                         | 62              | i     | 387   |
| Suit for, made by mistake ...                                                                                    | 62              | m     | 389   |
| Suit to recover, made on account of road cess falls under 96 ...                                                 | 96              | c     | 440   |
| <b>Exclusion—</b>                                                                                                |                 |       |       |
| Exclusion of day that right to sue accrues ...                                                                   | xii             | ...   | 84    |
| — of day that judgment complained of was pronounced ...                                                          | xii             | ...   | 84    |
| — of time requisite for obtaining copy of judgment decree or award appealed against or sought to be reviewed ... | xii             | ...   | 84    |
| — of the day that former application was made was allowed even under IX of 1887 ...                              | xii             | a     | 84    |
| — of time that review was pending cannot be claimed as a matter of right ...                                     | xii             | b     | 85    |
| — of such time allowed by D. J. was not interfered with by H. C. ...                                             | xii             | b     | 85    |
| C. H.,— of time between judgment and signing decree allowed ...                                                  | xii             | c     | 86    |
| — of time occupied in ascertaining number of folios for copy not allowable except when delay is unavoidable ...  | xii             | d     | 86    |
| — of such time allowable if papers were not procurable or mistake occurred in calculating number of sheets ...   | xii             | d     | 86    |
| Creditor cannot exclude time between debtor's death beyond seas and administration under Indian Act...           | xiii            | n     | 94    |
| Under English Act, he can ...                                                                                    | xiii            | o     | 94    |
| He can also deduct time that legal representative is absent beyond sea ...                                       | xiii            | o     | 95    |
| — of proceeding <i>bond-fide</i> in court without jurisdiction ...                                               | xiv             | ...   | 96    |
| — in case of order under C. P. C. section 20 ...                                                                 | xiv             | ...   | 96    |
| — in case of application ...                                                                                     | xiv             | ...   | 96    |
| — of time that defendant urged plea of set off in former suit ...                                                | xiv             | a     | 97    |
| — will be allowed only when former proceedings were prosecuted by plaintiff or person under whom he claims ...   | xiv             | c     | 98    |
| — will not be allowed if former suit was against wrong party ...                                                 | xiv             | d     | 98    |
| — will not be allowed if 1st suit was against one of the defendants in the second ...                            | xiv             | e     | 98    |
| — of time of suit which was non-suited disallowed...                                                             | xiv             | g     | 99    |
| — of time under Act XIV of 1859 was allowed in case of inability to serve summons ...                            | xiv             | h     | 99    |

**Exclusion—continued.**

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| — can be allowed in case of accidental circumstances beyond control preventing success ...                                                                            | xiv             | h     | 100      |
| — of time of suit which 1st court rejected and of appeal against it under Act XIV ...                                                                                 | xiv             | i     | 100      |
| — of time allowed whether dismissal for want of jurisdiction is right or wrong ...                                                                                    | xiv             | j     | 100      |
| — of time that special appeal was pending allowed ...                                                                                                                 | xiv             | j     | 100      |
| — of time not disallowed by fact that 1st suit was pending when 2nd suit was brought ...                                                                              | xiv             | j     | 101      |
| — of time between original decree and institution of appeal allowed under Act XIV ...                                                                                 | xiv             | l     | 101      |
| A. H. Declined, of a suit rejected in appeal for defect of parties ...                                                                                                | xiv             | m     | 102      |
| — of time of suit wrongly prosecuted in Revenue Court allowed ...                                                                                                     | xiv             | m     | 102      |
| — of time of a partition suit rejected for want of jurisdiction as to real property, and non-accrual of cause of action as to moveable property, allowed by P. C. ... | xiv             | p     | 103      |
| — of time can be allowed only when cause of action is the same ...                                                                                                    | xiv             | q     | 104, 105 |
| — of time not allowed in case of consolidated suit after dismissal of former separate suits ...                                                                       | xiv             | q     | 104, 105 |
| — of time limited by a court for presentation to proper court disallowed ...                                                                                          | xiv             | r     | 105      |
| — of time that plaintiff waited to get back his plaint disallowed ...                                                                                                 | xiv             | r     | 105      |
| — of time under section 15 of Act IX of 1871 held inapplicable to a suit under Act XVIII of 1873 ...                                                                  | xiv             | s     | 105      |
| — of time under section 14 of Act XIV of 1859 held inapplicable to suits under section 42 of Bombay Act VII of 1867 and Act XIV of 1868 ...                           | xiv             | t, u  | 106      |
| A. H., of time of a suit rejected for misjoinder disallowed ...                                                                                                       | xiv             | v     | 106, 107 |
| C. H. dissenting allowed ...                                                                                                                                          | xiv             | w     | 107      |
| C. H. allowed, of time of a suit brought against one who had died before suit under the Act of 1859 ...                                                               | xiv             | w     | 107      |
| — of time of suit against wrong person as representative disallowed ...                                                                                               | xiv             | w     | 107      |
| — of time of a suit rejected for non-production of Collector's certificate under Pensions' Act allowed ...                                                            | xiv             | x     | 108      |
| C. H. declined to deduct such time in April 1863 ...                                                                                                                  | xiv             | y     | 108      |
| — of time that a plaint was in a wrong court allowed ...                                                                                                              | xiv             | z     | 108, 109 |
| — of time that plaint was on the file of a court until returned allowed ...                                                                                           | xiv             | 2-a   | 109      |
| — of time of suit rejected as brought by manager not allowed ...                                                                                                      | xiv             | 2-b   | 109      |
| — of time of suit rejected for limitation disallowed ...                                                                                                              | xiv             | 2-d   | 110      |
| — of time of suit rejected for not setting out boundaries disallowed under the Act of 1859 ...                                                                        | xiv             | 2-d   | 110      |
| — of time that plaint was on file until High Court refused sanction to entertain it allowed ...                                                                       | xiv             | 2-e   | 110      |
| C. H. allowed, of time under section 14 to a suit under the Indian Registration Act ...                                                                               | xiv             | 2-f   | 111      |
| B. H. allowed, of time to suits under the Municipal Act ...                                                                                                           | xiv             | 2-g   | 111      |
| — of time that application for a certificate to execute decree made to a conciliator disallowed ...                                                                   | xiv             | 2-h   | 112      |

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| <b>Exclusion—continued.</b>                                                                                                         |              |       |       |
| —of time occupied in obtaining conciliator's certificate to sue, was allowed ...                                                    | xiv          | 2-i   | 112   |
| —of time of a suit instituted in a Foreign Court ...                                                                                | xiv          | 2-j   | 113   |
| A. H. refused, of time that redemption suit was pending in which plaintiffs claimed to deduct money due by defendant on account ... | xiv          | 2-k   | 113   |
| —of time during which commencement of suit was stayed by injunction or order allowed ...                                            | xv           | ...   | 114   |
| —of time that execution was stayed by injunction not allowed ...                                                                    | xv           | a     | 114   |
| C. P. O. of 1882, allows, of time that a Civil Court is prohibited from executing a decree referred to Collector for execution ...  | xv           | b     | 115   |
| —of time that injunction prohibited collection of debts allowed ...                                                                 | xv           | c     | 115   |
| B. H., of time that a decree was under attachment cannot be deducted ...                                                            | xv           | f     | 116   |
| C. H. held otherwise ...                                                                                                            | xv           | f     | 117   |
| M. H. disallowed, of time that judgment-debtor prosecuted another suit to remove obstruction; under Act IX of 1871 ...              | xv           | g     | 117   |
| M. H. observed that XIV of 1859, allowed such deduction ...                                                                         | xv           | g     | 118   |
| —of time that judgment-debtor attempts to set aside execution sale ...                                                              | xvi          | ...   | 121   |

**Exclusive Privilege—(See Privilege.)**

**Execution of Decree or Order—**

|                                                                                                                                              |      |   |     |
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| — Comes under adjective law ...                                                                                                              | i    | a | 5   |
| What limitation governs applications for, made after 1st April, 1873, and after IX of 1871 was repealed, in suits filed before that date ... | i    | h | 9   |
| C. H. and B. H. Act IX of 1871 governed applications made during its operation ...                                                           | i    | i | 10  |
| P. C. Act XIV of 1859 governed such, made in suits commenced before April, 1873, ...                                                         | i    | j | 11  |
| C. H. followed P. C. in July, 1882, in case of application of 1881 to execute a decree of January, 1877 ...                                  | i    | k | 11  |
| C. H. doubted the correctness of its own decision ...                                                                                        | i    | l | 12  |
| C. H. held that the Act of 1877 applied to all applications made after its operation ...                                                     | i    | m | 12  |
| M. H. The law prevailing at the time of the application governs it ...                                                                       | i    | n | 13  |
| B. H. applied XIV of 1859 to application of September, 1878, for execution of decree of July, 1872 ...                                       | i    | o | 13  |
| Provision of sec. 13 as to defendant's absence from British India does not apply to ...                                                      | xiii | a | 89  |
| Application for, stayed by injunction pending disposal of suit or appeal is treated as revival of former proceedings ...                     | xv   | a | 114 |
| Application for sale of attached property after disposal of claims and suits treated as renewal of former application (XIV of 1859) ...      | xv   | b | 118 |
| B. H. after dissolution of injunction issued pending disposal of suit treated as revival ...                                                 | xv   | i | 118 |
| Such case was held to fall under 178 ...                                                                                                     | xv   | i | 119 |
| A. H. followed the above decision in July, 1883 ...                                                                                          | xv   | i | 119 |

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| — of any Civil Court unprovided for by number 180 or C. P. C. section 230                                                                                                  | 179             | ...   | 642   |
| As to what are steps in aid of execution, decisions conflict                                                                                                               | 179             | a     | 643   |
| Date of applying means date of presentation                                                                                                                                | 179             | b     | 644   |
| M. H. Application made during pendency of proceeding gives a date from which to calculate time                                                                             | 179             | b     | 644   |
| C. H. and M. H. Court might consider whether decree was barred on the date of any prior application                                                                        | 179             | c     | 644   |
| P. C. Order right or wrong implying decision on limitation is binding until reversed                                                                                       | 179             | d     | 645   |
| B. H. Court's decision on limitation has the effect of <i>res judicata</i>                                                                                                 | 179             | f     | 646   |
| C. H. erroneous order is not a nullity                                                                                                                                     | 179             | g     | 647   |
| — of High Court's order for costs held to fall under 167 of IX of 1871                                                                                                     | 179             | l     | 649   |
| First application for execution without specification of property to be attached, and subsequent application for time to put in a list were treated as one dating from 1st | 179             | p     | 651   |
| — against one of several legal representatives of a debtor takes effect against all                                                                                        | 179             | q     | 652   |
| Right to execution is not affected by case being struck off                                                                                                                | 179             | t     | 654   |
| Under Act IX of 1871, limitation was computed from date of issuing notice to debtor                                                                                        | 179             | v     | 655   |
| Under IX of 1871, application of an incidental kind, issuing a warrant or attachment did not give fresh starting point                                                     | 179             | w     | 656   |
| B. H. 167 of Act IX of 1871 is wide enough to include any application to enforce or keep in force decree or order                                                          | 179             | x     | 656   |
| Creditor's heir's application for substitution of his name and for recovery of debt is one within 167 of Act IX of 1871                                                    | 179             | y     | 657   |
| Proceedings on application by agent other than the one in the decree not invalid                                                                                           | 179             | z     | 657   |
| Insufficiently stamped application keeps decree alive                                                                                                                      | 179             | 2-a   | 658   |
| So does one returned for amendment but rejected for absence                                                                                                                | 179             | 2-b   | 658   |
| C. H. one of three parties to partition decree taking out execution falls under clause 3                                                                                   | 179             | 2-f   | 660   |
| A. H. Application by one of two joint decree-holders for part execution, will not keep decree alive                                                                        | 179             | 2-c   | 658   |
| A. H. By two of three decree-holders for part execution kept decree alive                                                                                                  | 179             | 2-d   | 659   |
| M. H. By one of four decree-holders for execution of so much as he feels himself entitled to, keeps decree alive                                                           | 179             | 2-e   | 659   |
| Moving court to order Collector to alter registry cannot keep decree alive                                                                                                 | 179             | 2-g   | 660   |
| Application for return of decree to the court that sent it is within 179                                                                                                   | 179             | 2-h   | 660   |
| Application not in strict accordance with sec. 237 held to be one under sec. 235                                                                                           | 179             | 2-i   | 661   |
| Judgment prohibiting execution till expiry of 4 months falls under 178                                                                                                     | 179             | 2-j   | 661   |

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| <b>Execution of Decree or Order—continued.</b>                                                                                                                 |                 |            |       |
| C. H. Time runs from disposal of defendant's appeal against order refusing to set aside <i>ex parte</i> decree ... ..                                          | 179             | <b>2-r</b> | 666   |
| M. H. Time runs from dismissal of defendants' appeal though plaintiff had partially executed before appeal ... ..                                              | 179             | <b>2-s</b> | 666   |
| A. H. Time for execution against one of two defendants who has not appealed runs from decree date ... ..                                                       | 179             | <b>2-u</b> | 667   |
| <b>STEP NOT IN AID OF EXECUTION—</b>                                                                                                                           |                 |            |       |
| Creditor's opposition to the debtor's appeal against court's order in execution ... ..                                                                         | 179             | <b>2-p</b> | 665   |
| C. H. Appeal from decree against sureties would not entitle decree-holder to calculate time from date of appeal decree for execution against principals ... .. | 179             | <b>2-v</b> | 667   |
| Decree reversed on appeal by one of three defendants but restored in 2nd appeal can be executed within 3 years of High Court's order ... ..                    | 179             | <b>2-w</b> | 668   |
| Though vendee of a portion alone appealed, time ran from final decree even against mortgagee ... ..                                                            | 179             | <b>1-y</b> | 670   |
| Application to execute decree partially satisfied by private arrangement ... ..                                                                                | 179             | <b>4-b</b> | 682   |
| <b>STEP IN AID OF EXECUTION—</b>                                                                                                                               |                 |            |       |
| 1. Decree-holder depositing 2 Rupees as costs for sale process ... ..                                                                                          | 179             | <b>3-c</b> | 671   |
| 2. Vakil's consent to postpone sale ... ..                                                                                                                     | 179             | <b>3-d</b> | 672   |
| 3. Application for proclamation ... ..                                                                                                                         | 179             | <b>3-e</b> | 672   |
| 4. ——— for transmission of decree to another court ... ..                                                                                                      | 179             | <b>3-f</b> | 672   |
| 5. Giving with application stamps to transmit decree ... ..                                                                                                    | 179             | <b>3-g</b> | 672   |
| 6. Judgment-debtor's application promising payment of debt ... ..                                                                                              | 179             | <b>3-h</b> | 673   |
| 7. Joint application of debtor and creditor for postponement of sale ... ..                                                                                    | 179             | <b>3-i</b> | 673   |
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| 9. Creditor's application to summon witnesses in the matter of claim ... ..                                                                                    | 179             | <b>3-k</b> | 674   |
| 10. To set aside debtor's objection to confirmation of sale ... ..                                                                                             | 179             | <b>3-l</b> | 674   |
| 11. For a diary to obtain copy of puttah ... ..                                                                                                                | 179             | <b>3-n</b> | 675   |
| 12. Application to execute attached decree ... ..                                                                                                              | 179             | <b>3-m</b> | 674   |
| 13. A. H. and M. H. For payment of sale-proceeds is a step ... ..                                                                                              | 179             | <b>3-r</b> | 677   |
| 14. C. H. such application is not a step ... ..                                                                                                                | 179             | <b>3-s</b> | 678   |
| <b>APPLICATIONS WHICH ARE NOT STEPS IN AID OF EXECUTION—</b>                                                                                                   |                 |            |       |
| 1. Benamidar's application for execution ... ..                                                                                                                | 179             | <b>3-t</b> | 679   |
| 2. Decree-holder paying court fee to bid for property ... ..                                                                                                   | 179             | <b>3-u</b> | 679   |
| 3. Decree-holder's application for postponement of sale to make arrangement with debtor ... ..                                                                 | 179             | <b>3-v</b> | 679   |
| 4. Praying for sale as one lot for 2 decrees ... ..                                                                                                            | 179             | <b>3-w</b> | 680   |
| 5. C. H. Decree-holder's widow's application for return of copy of decree ... ..                                                                               | 179             | <b>3-u</b> | 675   |
| 6. Asking merely to keep the decree alive ... ..                                                                                                               | 179             | <b>3-x</b> | 681   |

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| 7. Pleador's application 2 days after decree-holder's death                                                                                                            | 179 | 3-y | 681 |
| 8. Defendant entitled to cost opposing the plaintiff's mode of execution                                                                                               | 179 | 3-z | 681 |
| 9. Application to a conciliator under Act XVII of 1859                                                                                                                 | 179 | 4-a | 682 |
| Instalment decree should be executed in one lump in default of one instalment                                                                                          | 179 | 5-a | 696 |
| Condition in a compromise that in default of certain number of instalments decree should be executed in full, cannot prevent limitation                                | 179 | 4-y | 695 |
| Application within 3 years from 9th and 10th instalments held to be within time under IX of 1871                                                                       | 179 | 4-z | 696 |
| C. H. Decree providing for recovery of entire amount in default of any three successive instalments does not bar instalments due for 3 years preceding the application | 179 | 5-b | 697 |
| C. H. held such decree barred when execution was not applied for within 3 years from first default                                                                     | 179 | 5-c | 698 |
| Decree-holder waives his right to larger sum in default of one instalment by accepting instalment after default                                                        | 179 | 5-d | 698 |
| Such acceptance of payment does not keep decree alive                                                                                                                  | 179 | 5-e | 699 |
| M. H. Application to recover 5th instalment not barred though creditor waived to recover the whole amount under decree                                                 | 180 | 5-f | 700 |
| To enforce judgment decree or order of any charter court on its original jurisdiction or an order of Her Majesty in Council                                            | 179 | ... | 701 |
| Giving notice after 1 year has the effect of reviving the judgment of charter court                                                                                    | 180 | a   | 701 |
| Application to enforce an order of P. C., falls under 180                                                                                                              | 180 | b   | 682 |

**Execution Sale—**

|                                      |    |   |     |
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| C. H. set aside, on equitable ground | 12 | m | 308 |
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**Executor—**

|                                                                                                                            |      |   |     |
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| Debtor becoming creditor's, and creditor becoming debtor's, does not fall within proviso to sec. 9                         | ix   | g | 49  |
| —'s right of retainer extends to barred debts                                                                              | ix   | g | 49  |
| —may sue before proving the will                                                                                           | xvii | a | 123 |
| —appointed by will is one capable of suing                                                                                 | xvii | a | 124 |
| —acting before proving, makes time to run from acting                                                                      | xvii | b | 124 |
| —or Administrator taking probate is representative under Succession Act                                                    | xvii | c | 124 |
| —is representative under Hindu Wills' Act                                                                                  | xvii | e | 125 |
| —of a Hindu not falling within Wills Act can sue without Probate                                                           | xvii | e | 180 |
| B. H. an, under any Hindu or Mahomedan will, may establish right without probate except in cases falling within Wills' Act | xvii | r | 132 |
| Person intermeddling with a deceased's property is, of his own wrong                                                       | xvii | t | 133 |
| Such, is liable to the extent of assets                                                                                    | xvii | t | 133 |
| C. H. of a Hindu Will cannot revive barred debt                                                                            | xix  | x | 163 |



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| English decisions as to —'s liberty inapplicable to India ... ..                                                               | xix             | x     | 163   |
| — under Hindu Wills' Act or any other, cannot be agent of the beneficiary under the will ...                                   | xix             | x     | 164   |
| B. H. An. of a Hindu Will coming within XXI of 1870 had the same interest as an, under English Law ... ..                      | xix             | 2-a   | 165   |
| Suit by, for certain wrongs ... ..                                                                                             | 20              | ...   | 333   |
| — is enabled by Act XIII of 1855 to sue and be sued in certain cases ... ..                                                    | 20              | a     | 333   |
| XII of 1855 inapplicable to wrongs which do not survive to the representative ... ..                                           | 20              | b     | 334   |
| It applies to suits for wrongs which did not survive to or against ... ..                                                      | 20              | b     | 334   |
| Right of action surviving to, and against By —, Administrator, or representative, for death, caused by actionable wrong ... .. | 20              | c     | 334   |
| Suit against —, for wrong done by testator ... ..                                                                              | 21              | ...   | 335   |
|                                                                                                                                | 33              | ...   | 348   |
| <b>Exparte—</b>                                                                                                                |                 |       |       |
| — Judgment application to set aside ... ..                                                                                     | 164             | ...   | 612   |
| To cancel, order under sec. 40 of V of 1882 held to run from service of notice of order to be cancelled ... ..                 | 164             | a     | 613   |
| C. H. "for enforcing" decree, notice of execution petition is not, but attachment is sufficient process ... ..                 | 164             | b     | 613   |
| Plaintiff on appeal on merits might object to re-hearing, if granted after time ... ..                                         | 164             | c     | 614   |
| <b>Expiry—</b>                                                                                                                 |                 |       |       |
| Of the period of limitation when the court is closed ... ..                                                                    | v               | i     | 32    |
| <b>Extinction—</b>                                                                                                             |                 |       |       |
| — of right to property ... ..                                                                                                  | xxviii          | ...   | 259   |
| Law of extinctive prescription was first introduced in the Act of 1871 ... ..                                                  | xxviii          | a     | 259   |
| It first applied to land or hereditary office ... ..                                                                           | xxviii          | b     | 259   |
| Act of 1879 extended to any property ... ..                                                                                    | xxviii          | b     | 260   |
| No express provision for transfer of right to adverse holder ... ..                                                            | xxviii          | b     | 260   |
| Even under English Statute, Law is the same as under the Indian Act ... ..                                                     | xxviii          | c     | 260   |
| Effect of sec. 21 is to execute a conveyance to the party whose possession is a bar ... ..                                     | xxviii          | c     | 260   |
| P. C. even before Act XIV of 1859 titles extinct in favour of the possessor after remedy is barred ...                         | xxviii          | d     | 261   |
| No remitter to a right for which the party had no remedy by action at all ... ..                                               | xxviii          | d     | 261   |
| Government not permitted to take possession by executive power when it has lost its right to sue ...                           | xxviii          | e     | 262   |
| 12 years' continuous adverse possession bars remedy and extinguishes right ... ..                                              | xxviii          | g     | 263   |
| Suit to recover dharmakartaship held barred and right extinct under sec. 29 Act IX of 1871 ... ..                              | xxviii          | h     | 264   |

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| <b>Extinction—continued.</b>                                                                                                                                                |                 |       |          |
| Exclusive receipt of rent by one of the mortgagor's heirs for more than 12 years will not extinguish other's right to redeem, but exclusive possession of property would... | xxviii          | i     | 264, 265 |
| Law of Limitation does not extinguish debts                                                                                                                                 | xxviii          | j     | 265      |
| Observations of Garth, C. J., ...                                                                                                                                           | xxviii          | j     | 266      |
| Non-participation of profits by plaintiff for more than 12 years from previous decree does not extinguish his title                                                         | 62              | e     | 380      |
| <b>Factor—</b>                                                                                                                                                              |                 |       |          |
| Suit against, for account                                                                                                                                                   | 88              | ...   | 424      |
| — is agent employed to sell goods, &c., for commission                                                                                                                      | 88              | a     | 425      |
| During continuance of agency right to sue accrues, on demand and refusal                                                                                                    | 88              | a     | 425      |
| If agent dies, time runs from date of death, if no demand had been made during life time                                                                                    | 88              | b     | 425      |
| <b>False imprisonment—</b>                                                                                                                                                  |                 |       |          |
| — is a continuing cause of action                                                                                                                                           | xxiii           | j     | 203      |
| To a suit for compensation time runs from termination of imprisonment                                                                                                       | xxiii           | j     | 203      |
| <b>Family-debt—</b> (See under Contribution.)                                                                                                                               |                 |       |          |
| <b>Firm of Attorneys—</b> (See under Partners.)                                                                                                                             |                 |       |          |
| <b>Fishery—</b>                                                                                                                                                             |                 |       |          |
| Prescriptive right of, is an easement                                                                                                                                       | iii             | c     | 23       |
| Right of, is one of the most common classes of property in Bengal...                                                                                                        | iii             | c     | 23       |
| — may be claimed though plaintiff does not allege enjoyment of any dominant tenement                                                                                        | xxvi            | 2-o   | 246      |
| To constitute prescriptive right of, under section 26, user; by ascertained persons should be proved                                                                        | xxvi            | 2-p   | 248      |
| — rights in tidal navigable rivers must be derived from the Crown. Presumption is against such right                                                                        | xxvi            | 2-q   | 248      |
| Mere recital in a quinquennial paper that a person is owner of jalkar is not sufficient                                                                                     | xxvi            | 2-q   | 248      |
| Right to fish in sea is common and not subject of property                                                                                                                  | xxvi            | 2-q   | 249      |
| Local custom may regulate right in certain portions of the sea                                                                                                              | xxvi            | 2-q   | 249      |
| Exercising right so as to prevent another from exercising an equal right is actionable                                                                                      | xxvi            | 2-q   | 249      |
| Observations of Westropp, C. J., on the principle of the recognition of custom as regulating sea-fishing                                                                    | xxvi            | 2-q   | 249, 250 |
| Stake-fishing along Malabar Coast is very ancient                                                                                                                           | xxvi            | 2-q   | 250      |
| Indian cases and the right of fishing in navigable tidal rivers and seas                                                                                                    | xxvi            | 2-r   | 251      |
| Observations of West, J., on prerogatives of the Crown in India in this respect                                                                                             | xxvi            | 2-r   | 251      |
| Right of fishing in fresh rivers of what kind soever does belong to the owners of the adjacent soil                                                                         | xxvi            | 2-s   | 252      |
| There can be no public right of fishing in non-tidal waters even where they are to some extent navigable.                                                                   | xxvi            | 2-t   | 252      |
| <b>Foot-path—</b> (See Way)                                                                                                                                                 |                 |       |          |

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| <b>Foreclosure—</b>                                                                                                                                                        |                 |       |          |
| To a suit for — next male heir is not a necessary party.                                                                                                                   | 141             | e     | 545      |
| Observations of B. H., as to whether Article 149 or 132 of Act IX of 1871, applied to a suit for ...                                                                       | 146             | c     | 588      |
| Suit for — ...                                                                                                                                                             | 147             | ...   | 589      |
| Article 147 is new and has created difficulty and doubt.                                                                                                                   | 147             | a     | 589      |
| <b>Foreign—</b>                                                                                                                                                            |                 |       |          |
| Suits on — contracts are subject to rules of this Act ...                                                                                                                  | xi              | ...   | 78       |
| — Limitation Law is no defence unless it has extinguished contract...                                                                                                      | xi              | ...   | 78       |
| Sec. 11 is silent as to suits for property or rights of other kinds ...                                                                                                    | xi              | a     | 78       |
| — Law of Limitation not extinguishing right was held bad plea ...                                                                                                          | xi              | d     | 79       |
| — Law of Limitation extinguishing right bars action as if it was the law of the court resorted to ...                                                                      | xi              | e     | 80       |
| Authority of Story on this point ...                                                                                                                                       | xi              | f     | 80, 81   |
| Obligor of a bond executed in a — country can plead shorter limitation of the court resorted to ...                                                                        | xi              | g     | 82       |
| 20 years allowed to suit brought in England on a bond executed in India ...                                                                                                | xi              | h     | 82       |
| English bankruptcy certificate held good answer to debt arising in and sued for in Calcutta Supreme Court..                                                                | xi              | i     | 83       |
| <b>Foreign Bill—</b>                                                                                                                                                       |                 |       |          |
| Suit on a dishonored, where protest is made and notice given ...                                                                                                           | 77              | ...   | 414      |
| — defined ...                                                                                                                                                              | 77              | a     | 414      |
| Under English Law, Statute runs immediately after notice is given ...                                                                                                      | 77              | b     | 414      |
| <b>Foreign Court—</b>                                                                                                                                                      |                 |       |          |
| Time that a suit was pending in, which had no jurisdiction according to British Law ...                                                                                    | xiv             | 2-j   | 113      |
| Whether section 14 applies to suits prosecuted in ...                                                                                                                      | xiv             | 2-j   | 113      |
| <b>Foreign judgment—</b>                                                                                                                                                   |                 |       |          |
| Suit on— ...                                                                                                                                                               | 117             | ...   | 462      |
| — means judgment of a court beyond British India...                                                                                                                        | 117             | a     | 462      |
| No suit is maintainable in British India on judgment of a court in Native States ...                                                                                       | 117             | b     | 462      |
| B. H. held suit on any judgment of any court in British India will not lie ...                                                                                             | 117             | b     | 463      |
| M. H. held suit will lie on judgment of courts in Native States, Government of India sanctioned enforcement by British Courts, decrees of Travancore and Cochin States ... | 117             | c     | 463      |
| <b>Forfeiture—</b>                                                                                                                                                         |                 |       |          |
| Suit for, upon Statute ...                                                                                                                                                 | 6               | ...   | 276      |
| Widow's alienation against Solenoma is not ...                                                                                                                             | 141, 143        | d, a  | 544, 553 |
| Suit for possession of immoveable property where plaintiff became entitled by reason of, ...                                                                               | 143             | ..    | 553      |
| Suit to cancel a mortgage deed and to eject on the ground of breach of condition to pay life annuity held to fall under 144 of IX of 1871 ...                              | 143             | b     | 554      |
| Section 23 of IX of 1871, enabled plaintiff to treat each failure to pay as new breach ...                                                                                 | 143             | b     | 555      |

**Forgery—**

| Sec. or Art.                                                                                                                    | Note. | Page.   |
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| 92                                                                                                                              | ...   | 432     |
| C. H., plaintiff's suit for declaration of a right to husband's property alleging husband's will to be, does not fall under 92. | 92    | b 433   |
| So is a suit for possession and to set aside a sale deed.                                                                       | 92    | b 433   |
| — of an instrument attempted to be enforced against plaintiff                                                                   | 93    | ... 433 |
| Knowledge of attempt is not necessary                                                                                           | 93    | a 433   |
| Setting up deed in suit and applying to be made respondent constitute attempt to enforce                                        | 93    | b 433   |
| It is not necessary that the party should seek to obtain entire fruit of the forged instrument...                               | 93    | b 434   |

**Fraud—**

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| — must be committed by party against whom right is sought to be enforced                                                                                                                                | xviii | h 140      |
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| <b>Interpretation—</b>                                                                                                                                                       |                 |       |          |
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| —'s suit for possession from tenant ...                                                                             | 139             | ...   | 530      |
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| — may sue trespassers during continuance of tenancy ...                                                             | 139             | a     | 530      |
| Observations of Mitter, J., on the running of time ...                                                              | 139             | a     | 530      |
| Publication in newspaper, of notice to quit, is not in itself sufficient to determine tenancy ...                   | 139             | b     | 531      |
| Defendant may plead tenancy and rely on limitation ...                                                              | 139             | c     | 531      |
| Tenant not paying rent for more than 12 years does not constitute adverse possession ...                            | 139             | d     | 532      |
| 139 inapplicable to permanent tenure ...                                                                            | 139             | e     | 533      |
| If a tenant for years holds over in India, time does not begin to run until tenancy on sufferance is determined ... | 139             | f     | 534      |
| Such tenant's possession is not adverse ...                                                                         | 139             | f     | 534      |
| <b>Lease—</b>                                                                                                       |                 |       |          |
| For arrears of revenue, suit to set aside ...                                                                       | 15              | ...   | 329      |
| <b>Legacy—</b>                                                                                                      |                 |       |          |
| Suit for ...                                                                                                        | 123             | ...   | 484      |
| 122 of the Act of 1871 has been enlarged in its scope in 123 ...                                                    | 123             | a     | 484      |
| When, or share becomes payable ...                                                                                  | 123             | a     | 485      |
| Suit must be to recover from person bound by law to pay it ...                                                      | 123             | b     | 486      |
| To complete legatee's time, executor's assent is necessary ...                                                      | 123             | c     | 486      |
| As to, payable and the happening of contingency time does not run till contingency happened ...                     | 123             | d     | 486      |
| English Law on the subject ...                                                                                      | 123             | e     | 486      |

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| <b>Legal disability—</b> ( <i>See Disability.</i> )                                                                                        |                 |       |          |
| <b>Legal process—</b>                                                                                                                      |                 |       |          |
| Suit for wrongful seizure of moveables under                                                                                               | ...             | 29    | ...      |
| <b>Legal representative—</b> ( <i>See Representative.</i> )                                                                                |                 |       |          |
| <b>Lessor—</b>                                                                                                                             |                 |       |          |
| Suit by, for value of trees cut down by lessees                                                                                            | ...             | 108   | ...      |
| <b>Libel—</b>                                                                                                                              |                 |       |          |
| Suit for compensation for                                                                                                                  | ...             | 24    | ...      |
| — defined                                                                                                                                  | ...             | 24    | a        |
| Time runs from date of publication                                                                                                         | ...             | 24    | b        |
| Sale of one copy of the, within a year of suit will nega-<br>tive, the plea of limitation                                                  | ...             | 24    | c        |
| <b>License—</b>                                                                                                                            |                 |       |          |
| License can be revoked if injurious consequences result                                                                                    | xxvi            | q     | 228      |
| Case where, held not revocable...                                                                                                          | xxvi            | q     | 228      |
| Distinction between, and one coupled with creation of<br>interest                                                                          | ...             | xxvi  | q        |
| <b>Lien—</b> ( <i>See Vendor.</i> )                                                                                                        |                 |       |          |
| <b>Light—</b>                                                                                                                              |                 |       |          |
| Twenty years' appropriation of, and air required to<br>entitle plaintiff to prevent his neighbour's blocking<br>up the aperture...         | xxvi            | b     | 216, 217 |
| Defendant can obstruct new window if he can do so<br>without obstructing the old one                                                       | xxvi            | c     | 217      |
| Use of aperture admitting, when open and not furtive is<br>enjoyment as of right                                                           | xxvi            | d     | 217      |
| It is enough if the building has assumed the appearance<br>of a dwelling-house though not completed or used<br>as such for 20 years        | xxvi            | e     | 218      |
| Obstruction of, and air must be material and such that<br>compensation would not give adequate relief                                      | xxvi            | f     | 218      |
| Court should look to all reasonable uses for occupation...                                                                                 | xxvi            | f     | 218, 219 |
| Opening a window cannot be prevented because it<br>affects neighbour's privacy...                                                          | xxvi            | g     | 219      |
| English Law on the subject                                                                                                                 | xxvi            | g     | 219      |
| According to the usage of Guzarat, opening new aper-<br>ture affecting privacy is actionable wrong                                         | xxvi            | h     | 220      |
| Opening window commanding a view of plaintiff's open<br>court yard is not invasion of a privacy                                            | xxvi            | h     | 220      |
| <b>Limitation—</b>                                                                                                                         |                 |       |          |
| Obligation resting on 1st court to reject for, is not laid<br>on each successive court                                                     | iv              | a     | 24       |
| — will not be affected by a testator generally                                                                                             | x               | r     | 62       |
| charging debts on his property                                                                                                             | x               | 2-j   | 74       |
| — cannot be pleaded against member of a fund<br>advancing a claim on the fund                                                              | x               | 2-k   | 75       |
| — does not apply to money advanced for a married<br>woman's support, being debt payable out of funds<br>held in trust for her separate use | xvii            | b     | 124      |
| — is not stopped by want of personal representative<br>if time ran in the life-time of the debtor                                          | xvii            | i     | 126      |
| — for suit for account against manager's heir does<br>not run until administration is obtained                                             |                 |       |          |

**Limitation—continued.**

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| To suit for money due from deceased agent time ran from his death under XIV of 1859 ...          | xvii            | j     | 136      |
| — Act does not apply to Collector's application to cancel sale under Bombay Act V of 1862 ...    | xviii           | s, t  | 146, 147 |
| — commences when injury is complete at the time of the Act ...                                   | xxiv            | a     | 206      |
| — runs from damage when act is not injurious till damage occurs ...                              | xxiv            | a     | 206      |
| — does not begin to run as long as plaintiff's claim is recognized by temporary settlement... .. | 46              | e     | 362      |

**Limitation—(Not specially provided for.)**

|                                                                                                                                                 |     |    |     |
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| — under 120 ... ..                                                                                                                              | 120 | .. | 470 |
| Before applying the Article, court should see no other Articles apply ... ..                                                                    | 120 | a  | 470 |
| 120 does not apply to suit for money wrongly taken in execution ... ..                                                                          | 120 | b  | 470 |
| One heir's suit for a moiety of money drawn from banker by another heir of a deceased ... ..                                                    | 120 | c  | 471 |
| For a declaration of proprietary right to land ... ..                                                                                           | 120 | d  | 471 |
| 120 applies to suit against Municipal Committee for declaration of right ... ..                                                                 | 120 | e  | 471 |
| For declaration of partnership right for dissolution and appointment of a liquidator and for payment of the share of each out of surplus ... .. | 120 | f  | 472 |
| For one-fourth of purchase money of a house as per custom ... ..                                                                                | 120 | g  | 473 |
| On pro-note payable on demand at any time within six years ... ..                                                                               | 120 | h  | 474 |
| To recover deposit made for discharge of duty ... ..                                                                                            | 120 | i  | 474 |
| To enforce equitable claim to follow proceeds of plaintiff's property in any one's hands ... ..                                                 | 120 | j  | 474 |
| Equitable claim against a trustee to have an account of profits and to recover profits ... ..                                                   | 120 | k  | 475 |
| By one pre-emptor against another to determine who had better right ... ..                                                                      | 120 | l  | 476 |
| For title after dismissal of claim under section 246 of the C. P. C. of 1859 ... ..                                                             | 120 | m  | 476 |
| For an alternative claim ... ..                                                                                                                 | 120 | n  | 476 |
| For tax under Towns' Improvement Act though debt lies on the Statute ... ..                                                                     | 120 | o  | 476 |
| To compel defendant to fill a tank or for compensation... ..                                                                                    | 120 | p  | 477 |
| For apportionment of rent ... ..                                                                                                                | 120 | q  | 477 |
| By reversioner for compensation drawn by widow's lessee during pendency of suit for land ... ..                                                 | 120 | r  | 478 |
| By a creditor for himself and others to follow property in mortgagee's hands under mortgage given by the executor ... ..                        | 120 | s  | 478 |
| To establish right to turn of worship of idol, but not right to exclusive worship ... ..                                                        | 120 | t  | 478 |
| Cases held to fall either under 120 or 144 ... ..                                                                                               | 120 | u  | 479 |
| By a <i>cestuique trust</i> against a trustee for an account ... ..                                                                             | 120 | v  | 479 |
| By pre-emptor to enforce right against vendor and vendee under a registered conditional sale deed ... ..                                        | 120 | w  | 480 |
| By official liquidator to recover monies for which calls were made on share-holders ... ..                                                      | 120 | x  | 480 |

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**Limitation**—(*Not specially provided for*)—continued.

|                                                                            |     |   |     |
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| No—to court exercising functions of ministerial character ... ..           | 178 | a | 633 |
| — does not affect application for decree as per award.                     | 178 | b | 633 |
| — does not affect application for probate or administration ... ..         | 178 | c | 633 |
| — might be pleaded by a debtor after obtaining postponement of sale ... .. | 179 | h | 647 |

**Liquidator**—

|                                                                                                                                                                                                                                 |     |   |     |
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| —'s suit for monies for which calls were made on share-holders ... ..                                                                                                                                                           | 120 | x | 480 |
| Though — is substituted for, and enforces the right of the creditors in right of the company equities which might have been set up against the company cannot be set up against the liquidator as representing creditors ... .. | 120 | x | 480 |

**Maintenance**—

|                                                                                                     |     |     |     |
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| Suit for arrears of ... ..                                                                          | 128 | ... | 498 |
| Suit for declaration of right to ... ..                                                             | 129 | ... | 498 |
| Act XIV of 1859, gives 12 years from death of person on whose estate, was a charge ... ..           | 129 | a   | 499 |
| Article 128 of IX of 1871 made time to run from date of refusal ... ..                              | 129 | b   | 499 |
| P. C. held, withholding, to amount to refusal ... ..                                                | 129 | b   | 499 |
| Widow can recover arrears of, not excluded by Law of Limitation applicable ... ..                   | 129 | d   | 500 |
| — of younger brother being charge on inheritance falls under 132 ... ..                             | 132 | n   | 514 |
| Decree for annual, not providing for payment on specific dates held bound after 3 years ... ..      | 179 | 4-j | 687 |
| Right declared by such decree enforceable by suit ... ..                                            | 179 | 4-k | 688 |
| Decree directing possession in default of 3 instalments has 3 years from date of 1st default ... .. | 179 | 4-l | 688 |

**Misfeasance**—

|                                                 |    |     |     |
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| Independent of contract suit for ... ..         | 36 | ... | 349 |
| —, misfeasance and nonfeasance explained ... .. | 36 | a   | 349 |

**Malicious prosecution**—

|                                                                                                |    |     |          |
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| Suit for compensation for ... ..                                                               | 23 | ... | 336      |
| When complaint is the only act done, date of complaint is date of wrong ... ..                 | 23 | a   | 337      |
| In the case of a, time runs from close of the case ... ..                                      | 23 | a   | 337      |
| Act does not allow deduction on account of irregular proceedings ... ..                        | 23 | a   | 337      |
| No cause of action until, ends in plaintiff's favour ... ..                                    | 23 | b   | 337      |
| Time runs from final discharge of plaintiff and not from date that charge was preferred ... .. | 23 | b   | 337, 338 |

**Malik**—

|                                         |    |   |          |
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| Mode of recognizing the right of ... .. | 46 | e | 362, 363 |
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**Malikana**—(*See under recurring Right.*)

|                                                                             |     |     |     |
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| — is money charged upon immoveable property ... ..                          | 132 | ... | 506 |
| — being an annually recurring charge may be sued for within 12 years ... .. | 132 | r   | 517 |

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| <b>Mamlatdar's Courts' Act—</b>                                                                                                    |                 |         |       |
| Suit for property comprised in order under                                                                                         | 47              | ...     | 351   |
| Mamlatdar's order does not affect a partition suit                                                                                 | 47              | e       | 358   |
| His order is not conclusive evidence of possession and dispossession                                                               | 47              | e       | 358   |
| <b>Manager—</b>                                                                                                                    |                 |         |       |
| — of joint estate, suit for contribution by                                                                                        | 107             | ...     | 449   |
| <b>Manager, Hindu Family—</b>                                                                                                      |                 |         |       |
| M. H., held in 1878 that, is not agent within section 20 of IX, of 1871                                                            | xix             | v       | 163   |
| M. H., since declined to accept the above rule                                                                                     | xix             | w       | 163   |
| C. H., held in 1874 that, cannot revive barred debt                                                                                | xix             | x       | 163   |
| Observations of Couch, C. J., on the subject under XIV of 1859                                                                     | xix             | x       | 163   |
| M. H., held in 1881 and 1882, that, can acknowledge debts, but cannot revive barred debt                                           | xix             | y       | 164   |
| <b>Mark—</b>                                                                                                                       |                 |         |       |
| Is sufficient signature                                                                                                            | xx              | e       | 173   |
| <b>Mesne profits—</b>                                                                                                              |                 |         |       |
| Suit for                                                                                                                           | 109             | ...     | 449   |
| Claim for, for period preceding the three years before suit held barred                                                            | 109             | c       | 450   |
| To allow or not interest on, is discretionary with court...                                                                        | 109             | c       | 450   |
| When the amount of, cannot be ascertained till after the end of the year cause of action does not arise till then                  | 109             | d       | 451   |
| In case of decree for possession and mesne profits, application for ascertaining mesne profits is one for obtaining a final decree | 178             | o       | 640   |
| Proceedings for ascertaining, are proceedings in continuance of the original suit...                                               | 179             | i       | 647   |
| Such are the proceedings to ascertain value of improvement under decree for redemption of kanam                                    | 179             | j       | 648   |
| <b>Mining Company—(See under Partners.)</b>                                                                                        |                 |         |       |
| <b>Minor—</b>                                                                                                                      |                 |         |       |
| — can sue by guardian after one year from dismissal of claim-petition by guardian                                                  | vii             | b       | 43    |
| —'s suit by guardian is governed by limitation applicable to                                                                       | vii             | c       | 43    |
| —'s rights as regards appeals not specially excepted as in the case of suits                                                       | vii             | c       | 43    |
| M. H., C. H. and B. H. execution of —'s decrees were governed by provisions of section 7                                           | vii             | d, e, f | 43 44 |
| —'s application of September, 1882, to enforce decree of 1862 when he was, held not barred as he became major in September, 1879   | vii             | g       | 44    |
| —'s assignee is not entitled to the exemptions allowed to                                                                          | vii             | h       | 45    |
| Provisions relieving —s are personal and do not attach to property or title                                                        | vii             | h       | 45    |
| — suing on cause of action accrued to his father can claim no deduction                                                            | ix              | b       | 43    |
| — can sue within 3 years of his majority to recover property sold by father                                                        | 126             | a       | 491   |

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| <b>Minor—continued.</b>                                                                                                                                                                                                     |                 |       |          |
| Minority is extended to 21 years by order appointing a guardian though no certificate is taken out ...                                                                                                                      | 126             | b     | 492      |
| In case of two joint decree-holders for damages though adult decree-holder is barred, minor decree-holder can execute the whole decree as the adult cannot give valid discharge without the concurrence of the other ... .. | 178             | p     | 641      |
| <b>Minority—(See Minor.)</b>                                                                                                                                                                                                |                 |       |          |
| <b>Misappropriation—</b>                                                                                                                                                                                                    |                 |       |          |
| — of specific moveables ... ..                                                                                                                                                                                              | 48              | ...   | 369      |
| <b>Misconduct—</b>                                                                                                                                                                                                          |                 |       |          |
| Suits by principal against agent for ... ..                                                                                                                                                                                 | 90              | ...   | 426      |
| <b>Misfeasance—</b>                                                                                                                                                                                                         |                 |       |          |
| Suit for, independent of contract ... ..                                                                                                                                                                                    | 36              | ...   | 349      |
| <b>Mis-joinder—</b>                                                                                                                                                                                                         |                 |       |          |
| A. H. held, was not a cause of "like nature" occurring in section 14 ... ..                                                                                                                                                 | xiv             | v     | 106, 107 |
| — and defect of jurisdiction, C. H. held were causes of a similar nature ... ..                                                                                                                                             | xiv             | w     | 107      |
| <b>Mistake—</b>                                                                                                                                                                                                             |                 |       |          |
| Suit for relief on ground of ... ..                                                                                                                                                                                         | 69              | ...   | 438      |
| — of fact and law falls under 96 ... ..                                                                                                                                                                                     | 96              | a     | 438      |
| Difference between, of law and fact is not so sharply drawn in equity ... ..                                                                                                                                                | 96              | b     | 438, 439 |
| — mutual as to rights of parties to a contract ... ..                                                                                                                                                                       | 96              | b     | 439      |
| Suit to be relieved against renunciation of claim made under a mistake as to validity of marriage ... ..                                                                                                                    | 96              | b     | 440      |
| — resulting from a construction of a will ... ..                                                                                                                                                                            | 96              | b     | 440      |
| Suit to recover excess payment on account of road cess falls under 96 ... ..                                                                                                                                                | 96              | c     | 440      |
| Suit for money paid to defendant either through his fraud or by mistake on Collector's part, falls under 95 or 96 ... ..                                                                                                    | 96              | d     | 440      |
| <b>Mitakshara—</b>                                                                                                                                                                                                          |                 |       |          |
| Suit by Hindu, under the law of ... ..                                                                                                                                                                                      | 126             | ...   | 491      |
| <b>Money—</b>                                                                                                                                                                                                               |                 |       |          |
| Suit for, wrongly taken under decree falls under 29 ... ..                                                                                                                                                                  | 29              | b     | 344      |
| — includes any currency, usually employed in selling and buying as the equivalent of ... ..                                                                                                                                 | 51              | b     | 372      |
| — includes any paper, obligation, or security, certainly convertible into cash ... ..                                                                                                                                       | 51              | c     | 373      |
| Suit for, lent ... ..                                                                                                                                                                                                       | 57              | ...   | 376      |
| Suit for loan repayable at once or on demand falls under 57 or 59 ... ..                                                                                                                                                    | 57              | a     | 376      |
| For, lent on debtor's verbal agreement to repay at the end of a year falls under 115 ... ..                                                                                                                                 | 57              | a     | 376      |
| Observations of Garth, C. J., as to verbal agreement of loan ... ..                                                                                                                                                         | 57              | a     | 376      |
| Suit for, when lender has given a cheque ... ..                                                                                                                                                                             | 58              | ...   | 377      |
| In such case cause of action does not arise till cheque is cashed ... ..                                                                                                                                                    | 58              | a     | 377      |



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| Suit for, under an agreement that it shall be payable on demand                                                                                             | 20              | —     | 377      |
| English Law on debt payable on demand                                                                                                                       | 20              | b     | 379      |
| — paid for defendant, suit for                                                                                                                              | 61              | —     | 382      |
| Suit for, which plaintiff was obliged to pay in consequence of defendant's act lead to fail under 61                                                        | 61              | c     | 383      |
| — received for plaintiff's use                                                                                                                              | 62              | —     | 384      |
| Suit for plaintiff's, which defendant wrongfully obtained from 3rd party under false pretence fails under 62                                                | 62              | a     | 384      |
| Suit to recover, paid to defendant under court's order fell under 60 of the Act of 1871                                                                     | 62              | b     | 387      |
| This is distinguished from suit for refusal of sale proceeds under court's order                                                                            | 62              | b     | 387      |
| — payable for interest, suit for                                                                                                                            | 63              | —     | 391      |
| — found due on account stated, suit for                                                                                                                     | 64              | —     | 392      |
| Suit for, paid on existing considerations which afterwards fails                                                                                            | 97              | —     | 441      |
| — paid by pre-emptor under decree for pre-emption which has become void by failure to pay the sum enhanced by Appellate Court by fixed time falls under 120 | 97              | a     | 441      |
| Three years' time applies to suits for, not coming within the scope of registered agreement                                                                 | 116             | e     | 461      |
| — charged upon immoveable property, suit to enforce payment of                                                                                              | 132             | —     | 506      |
| — includes Malikana and Haqqas                                                                                                                              | 132             | —     | 506      |
| Suits on mortgage deeds had 3, 6, and 12 years under XIV of 59                                                                                              | 132             | a     | 506      |
| Courts doubted whether 132 applied to suits for personal remedy                                                                                             | 132             | a     | 506      |
| Decisions under XIV of 1859                                                                                                                                 | 132             | c     | 508      |
| B. H., 132 inapplicable to a money suit against mortgagor's person                                                                                          | 132             | d     | 509      |
| B. H., the article applied to such suit                                                                                                                     | 132             | e     | 509      |
| M. H., agreed with B. H. holding interest may be recovered for 12 years when charged on land                                                                | 132             | f     | 510      |
| A. H., dissented from B. H. in 1883, but followed it in 1884                                                                                                | 132             | g     | 510      |
| P. C., 132 of IX of 1871 inapplicable to personal remedy.                                                                                                   | 132             | h     | 511      |
| C. H., 132 inapplicable to mortgagee's suit to enforce personal liability                                                                                   | 132             | i     | 511      |
| B. H., 132 applies to realize a charge not amounting to mortgage while 147 applied to suit for foreclosure or sale                                          | 132             | j, k  | 512, 513 |
| — charged upon rents and profits is charged upon immoveable property                                                                                        | 132             | m     | 514      |

**Mortgagee—**

|                                                                                                                |    |     |     |
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| 1st, selling property with 2nd's consent is accountable for the surplus as trustee                             | x  | 2-m | 76  |
| 1st, selling under statutory power is not express trustee for surplus                                          | x  | 2-n | 77  |
| — receiving produce in lieu of interest under un-registered mortgage is not considered to receive as mortgagee | xx | k   | 180 |

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| <b>Mortgagee—continued.</b>                                                                                                                                                          |                 |       |          |
| — receiving rent under a lease independent of mortgage held not to amount to payment of interest under IX of 1871 ... ..                                                             | xx              | 1     | 180      |
| — receiving rent from mortgagor under subsequent lease regarded not as payment of interest under IX of 1871 ... ..                                                                   | xx              | m     | 180      |
| —'s suit for property purchased by himself under power of sale ... ..                                                                                                                | 134             | d     | 520      |
| — by purchase acquires unimpeachable title which is distinct from title as incumbrancer ... ..                                                                                       | 134             | d     | 520      |
| By, for possession of immovable property in other than Charter Courts ... ..                                                                                                         | 185             | ...   | 521      |
| — who has taken foreclosure proceedings may sue within 12 years from expiry of year of grace ... ..                                                                                  | 135             | a     | 521      |
| —'s right to possession under deed allowing him possession on default dates from default ... ..                                                                                      | 135             | b     | 522      |
| Second, in possession under decree for it dispossessed by first under decree can recover possession within 12 years from redemption ... ..                                           | 135             | c     | 522      |
| By, —'s assignee against mortgagor's vendees held barred under 135 ... ..                                                                                                            | 185             | d     | 523      |
| Suit by, for possession in Charter Court ... ..                                                                                                                                      | 146             | ...   | 586      |
| Reason for express exception limited to one special case of mortgage ... ..                                                                                                          | 146             | b     | 587      |
| Observations of Markby, J., and Garth, C. J., on 146 ... ..                                                                                                                          | 146             | b     | 587      |
| Suit by, for foreclosure or sale ... ..                                                                                                                                              | 147             | ...   | 589      |
| 147 creates doubt whether suit to realise money by sale of hypothecated property has 12 years or 60 years..                                                                          | 147, 132        | a, b  | 589, 507 |
| C. H. and A. H., 147 to apply to suits to enforce lien while B. H. held it to apply only when the instrument contained power express or implied to sell property out of court ... .. | 147             | b     | 590      |
| C. H. Suit by auction purchaser of mortgagee's right and title to enforce lien falls under 147 ... ..                                                                                | 147             | c     | 590      |
| A. H.' Suit by simple mortgagee to enforce lien by sale falls under 149 ... ..                                                                                                       | 147             | d     | 591      |
| M. H., simple mortgagee's suit to enforce lien does not fall under 147 ... ..                                                                                                        | 147             | e     | 592      |
| M. H., held extended technical definition of simple mortgage in 1877 will not also extend the period of limitation ... ..                                                            | 147             | e     | 592      |
| B. H., suit to realize debt by sale of mortgaged property by a deed giving power to sell falls under 147 ... ..                                                                      | 147             | f     | 592      |
| P. C. when by Act of Law there has been alienation from mortgagor to a third person, limitation between mortgagor and mortgagee ceases to apply ... ..                               | 147             | g     | 595      |
| Suit against, for redemption ... ..                                                                                                                                                  | 148             | ...   | 596      |
| <b>Mortgagor—</b>                                                                                                                                                                    |                 |       |          |
| —'s suit for compensation for land drawn by mortgagee falls under 62 ... ..                                                                                                          | 62              | 1     | 389      |
| Such right is independent of the right of redemption ... ..                                                                                                                          | 62              | 1     | 389      |
| Suit by, for surplus collections received by the mortgagee. Plaintiff was held entitled to such collections for 6 years before suits under XIV of 1859 ... ..                        | 105             | ...   | 447      |
| Balance from the commencement of mortgage can be recovered under this Article ... ..                                                                                                 | 105             | b     | 447      |

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| C. H. and B. H. since held defendant does not include...<br>A. H. 171-B applies to representative of a deceased<br>defendant respondent, made a ...                                                 | 171-B           | e     | 624   |
| A. H. 171-B applies to judgment-debtor's appeal against<br>order refusing to declare him insolvent ...                                                                                              | 171-B           | f     | 624   |
| <b>Resumption—</b>                                                                                                                                                                                  |                 |       |       |
| Resumption of rent-free land, suit for ...                                                                                                                                                          | 130             | ...   | 501   |
| Revenue purchaser's right dates from time that right<br>accrued to Government ...                                                                                                                   | 130             | a     | 501   |
| In case of lease in lien of maintenance grantor or suc-<br>cessor will be barred for the time of his enjoyment<br>if he does not contest for 12 years' grantee's claim<br>to hold in perpetuity ... | 130             | d     | 502   |
| A. H. Rent-free tenure, the revenue of which, grantor<br>undertook to pay is liable to ...                                                                                                          | 130             | e     | 502   |

**Resumption—continued.**

|                                                                                          |     |   |     |
|------------------------------------------------------------------------------------------|-----|---|-----|
| Possession as Lakheraj since 1st December, 1790, bars, suit by Government and others ... | 130 | f | 502 |
| Law concerned with the subject of Lakheraj grants ...                                    | 130 | g | 502 |
| More than 12 years' possession after accrual of right to assess, bars suit for ...       | 130 | h | 504 |

**Revenue—**

|                                                                                                                                                      |     |     |          |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|----------|
| Suit to set aside sale by Collector or officer of ...                                                                                                | 12  | ... | 302      |
| Suit to set aside sale to be brought within one year from the time it becomes conclusive ...                                                         | 12  | x   | 314      |
| — sale completed at the end of one month after sale..                                                                                                | 16  | x   | 314, 315 |
| Tenant's suit to recover a village sold for rent alleging non-service of notice held barred ...                                                      | 12  | y   | 315      |
| Suit to set aside fraudulent sale does not come under ...                                                                                            | 12  | y   | 316      |
| Suit to cancel, sale when no arrears were due ...                                                                                                    | 12  | z   | 316      |
| Such sale being void, decree for possession without annulling it is sufficient ...                                                                   | 12  | z   | 317      |
| One year's rule does not affect a mortgagor's suit for redemption ...                                                                                | 12  | 2-a | 317      |
| A co-sharer aggrieved by fraudulent, sale brought about by another co-sharer, might sue for reconveyance of property though one year had elapsed ... | 12  | 2-b | 318      |
| Order mentioned in clause (b) is an order made in judicial capacity ...                                                                              | 12  | 2-c | 318      |
| Suit for, paid by a lessee falls under 132 ...                                                                                                       | 99  | b   | 443      |
| Suit by purchaser in, sale time runs from purchase, no special provision for such suits in the Limitation Act ...                                    | 144 | 2-m | 578      |

**Reversioner—**

|                                                                                                                                                  |       |     |          |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-------|-----|----------|
| — of servient tenement, exclusion in favor of ...                                                                                                | xxvii | ... | 256      |
| English Statute excludes the time during which an infant, insane person, or married woman, is owner of the servient tenement ...                 | xxvii | a   | 257      |
| Difference between the English and the Indian Acts ...                                                                                           | xxvii | b   | 257      |
| Indian Act enables a person to acquire a right of way without reference to any grant expressed or implied ...                                    | xxvii | c   | 258      |
| Conditional exclusion in favour of, of servient heritage...                                                                                      | xxvii | d   | 258      |
| Effect of the exclusion ...                                                                                                                      | xxvii | e   | 258, 259 |
| To —s suit for possession and declaration that adoption was illegal, time runs from widow's death if adoption was not as heir to her husband ... | 119   | c   | 467      |
| — might sue during widow's life, time to set aside invalid adoption ...                                                                          | 119   | c   | 467      |
| To —s suit for possession from defendant who set up adoption by widow with permission, time held to run from widow's death ...                   | 119   | d   | 468      |
| To suit to declare adoption invalid, limitation held to run from adoption under the Acts of 1859 and 1871 ...                                    | 119   | e   | 468, 469 |
| —s born after the expiry of 12 years from date of alienation, cause of action for declaration is not revived in favour of ...                    | 126   | a   | 491      |
| Suit for shares, by, —s who and their predecessors never held possession does not fall under 127 ...                                             | 127   | e   | 495      |
| Suit by — ...                                                                                                                                    | 140   | ... | 535      |
| Reversion — ...                                                                                                                                  | 140   | b   | 536      |

|                                                                                                                                          | Sec. or<br>Art. | Note. | Page.    |
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| <b>Reversioner—continued.</b>                                                                                                            |                 |       |          |
| Whether, has fresh cause of action as to estate when widow dies, or whether he is barred if she would have been barred                   | 140             | b.    | 536      |
| As per Peacock, C. J., possession barring widow bars the heir which would not be the case if she was tenant for life                     | 140             | d     | 537      |
| P. C.—is bound by decision against widow                                                                                                 | 140             | e     | 537      |
| Comparing a widow to a tenant for life was calculated to mislead                                                                         | 140             | f     | 537      |
| To hold, is not barred by limitation against widow, would be anomalous                                                                   | 140             | g     | 537      |
| Observation of Garth, C. J., on the Acts of 1871 and 1877 which allows to, from the time estate, falls in                                | 140             | h     | 538      |
| B. H. widow represents estate under certain circumstances and limitation might run against the heir to the estate                        | 140             | i     | 539      |
| In —'s suit for property transferred by widow by an ikarar, possession held not adverse                                                  | 141             | a     | 542, 543 |
| C. H. adverse possession accrues even during widow's life-time                                                                           | 141             | b,    | 544      |
| — is not a necessary party to a suit to foreclose                                                                                        | 141             | c     | 545      |
| — as heir of deceased female on the very same cause of action which accrued to her does not fall under 141                               | 141             | g     | 547      |
| — was held not entitled to avail himself of limitation which widow had waived                                                            | 141             | h     | 548      |
| <b>Review—</b>                                                                                                                           |                 |       |          |
| Applications for, may be admitted after time on sufficient cause being shewn                                                             | v               | ...   | 29       |
| For delay in applying for, pendency of second appeal and ignorance of effect of judgment is no excuse                                    | v               | b     | 29, 30   |
| Counsel's failure to read a deed is not sufficient cause                                                                                 | v               | c     | 30       |
| For an order under section 629 restoring rejected application for                                                                        | 160             | ...   | 610      |
| — of judgment of any High Court or Chief Court of Punjab on original side                                                                | 162             | ...   | 612      |
| <b>Review of judgment—(See Application.)</b>                                                                                             |                 |       |          |
| Application for, except in cases provided for by No. 162 Section 21, Act XI of 1865 is in force, notwithstanding section 623 of C. P. C. | 178             | ...   | 629      |
| Application to amend decree which is at variance with the judgment falls under 178                                                       | 178             | a     | 629      |
|                                                                                                                                          | 178             | b     | 629      |
| <b>Revival—</b>                                                                                                                          |                 |       |          |
| Provisions against, of right to sue barred under the Act of 1871 or any other Act thereby repealed                                       | ii              | ...   | 14       |
| A. H. application to execute after disposal of suit against claimant is continuance of former proceedings                                | 179,            | 4-c   | 683      |
| After removal of objection in claimant's suit is, of former proceedings                                                                  | 179             | 4-d   | 684      |
| C. H. after dismissal of decree holder's suit to hold attached property liable must be revival of previous proceedings                   | 179             | 4-e   | 684      |
| Applying for attachment of some other property is not..                                                                                  | 179             | 4-f   | 684      |

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| <b>Revival</b> —continued                                                                                                                                         |                 |       |          |
| After disposal of objector's suit in which execution was<br>suspended by injunction is, of former proceeding...                                                   | 179             | 4-h   | 686      |
| <b>Revivor</b> —                                                                                                                                                  |                 |       |          |
| Of Judgment of High Court ... ..                                                                                                                                  | 180             | ...   | 701      |
| <b>Right</b> —                                                                                                                                                    |                 |       |          |
| Enjoyment as of ... ..                                                                                                                                            | xxvi            | ...   | 213      |
| <b>Salary</b> —( <i>See Recurring Right.</i> )                                                                                                                    |                 |       |          |
| Suit by clerk for, drawn from treasury by the head of<br>the office is one for money had and received ...                                                         | 62              | j     | 388      |
| <b>Sale</b> —                                                                                                                                                     |                 |       |          |
| Time for Collector's application to cancel illegal, under<br>Bombay Act V of 1862 runs from date of knowledge                                                     | xviii           | a     | 146      |
| Suit to set aside, under court decree ... ..                                                                                                                      | 12              | ...   | 302      |
| When, is one of the kinds named in 11, suit to set it<br>aside falls under it ... ..                                                                              | 12              | a     | 302      |
| Suit to recover what was taken in excess of what was<br>sold is not suit to set aside... ..                                                                       | 12              | b     | 302      |
| Suit to set aside, for irregularity falls under 12 ...                                                                                                            | 12              | c     | 303      |
| M. H., '11 does not indicate that it applies only to parties<br>to suits ... ..                                                                                   | 12              | d     | 303      |
| When property itself is sold, can only be set aside<br>within one year. ... ..                                                                                    | 12              | d     | 303      |
| M. H. third parties' suit to recover land sold in execu-<br>tion held not barred by 12 ... ..                                                                     | 12              | d     | 303, 304 |
| Suit to cancel court, made as property of another per-<br>son does not fall under 12 ... ..                                                                       | 12              | e     | 304      |
| Suit to recover plaintiff's share from purchaser who<br>took possession under, of plaintiff's co-sharer's inter-<br>est is not affected by one year's rule ... .. | 12              | f     | 304      |
| Suit for property setting aside, certificate, which wrong-<br>ly included it is not affected by 12 ... ..                                                         | 12              | g     | 304      |
| Suit to cancel sale made by court having no jurisdiction<br>is not affected by 12 ... ..                                                                          | 12              | h     | 305      |
| Defendant's suit to cancel court, and recover property<br>and reversal of decree held barred though brought<br>within a year of reversal ... ..                   | 12              | i     | 305      |
| — is not rendered invalid as against purchaser by<br>subsequent reversal of decree ... ..                                                                         | 12              | j     | 305      |
| C. H. suit to set aside, after decree was held in appeal<br>as barred falls under 12 ... ..                                                                       | 12              | k     | 306      |
| — held under an erroneous order is not a nullity until<br>set aside by suit ... ..                                                                                | 12              | k     | 307      |
| "Disallowed" in section 312 of C. P. C. has no reference<br>to an order on appeal ... ..                                                                          | 12              | k     | 307      |
| When execution is set aside as barred, defendant can<br>sue to set aside ... ..                                                                                   | 12              | l     | 307      |
| When purchaser is creditor himself, it cannot be said,<br>is made to <i>bond-fide</i> purchaser for value without<br>notice ... ..                                | 12              | l     | 308      |
| C. H. Execution, set aside on equitable grounds ...                                                                                                               | 12              | m     | 308      |
| Decree-holder was directed to re-convey on payment of<br>debt by judgment-debtor ... ..                                                                           | 12              | m     | 308      |
| C. H. suit to set aside, that decree and, were fraudulent<br>does not fall under 12 ... ..                                                                        | 12              | n     | 308, 309 |

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| <b>Sale—(continued.)</b>                                                                                                                                                  |                 |          |       |
| Fraudulent, entitles plaintiff to benefit of section 18 ...                                                                                                               | 12              | <b>e</b> | 309   |
| If setting aside, is only collateral to the main object of suit it is not necessary to file a suit within one year.                                                       | 12              | <b>p</b> | 310   |
| M. H. suit to set aside improper, brought one year after confirmation held barred ...                                                                                     | 12              | <b>q</b> | 311   |
| Son's suit to succeed to temple management brought one year after court, of father's right was allowed as, did not affect son's right ...                                 | 12              | <b>r</b> | 311   |
| M. H. clause (a) inapplicable to a junior's suit to cancel court, for decree against karnavan personally ...                                                              | 12              | <b>s</b> | 311   |
| Suit by vendee of an auction-purchaser's right for land held by defendant as auction-purchaser does not fall under 12 ...                                                 | 12              | <b>t</b> | 312   |
| Auction-purchaser's suit for property as per certificate or for refund of purchase money if possession of entire property cannot be given ...                             | 12              | <b>u</b> | 312   |
| Such suit as one to set aside, fell under 12 and as one for compensation has 3 years ...                                                                                  | 12              | <b>u</b> | 313   |
| Plaintiff's suit for property purchased by 2 joint-debtors through another in execution at the instance of the assignee of the decree benami for them, falls under 12 ... | 12              | <b>v</b> | 313   |
| — is binding though decree under which it was made is voidable ...                                                                                                        | 12              | <b>v</b> | 314   |
| Application to set aside execution, for irregularity ...                                                                                                                  | 172             | ...      | 628   |
| <b>Saving—</b>                                                                                                                                                            |                 |          |       |
| Of, titles already acquired ...                                                                                                                                           | ii              | ...      | 14    |
| Of, Act IX of 1872 section 25 ...                                                                                                                                         | ii              | ...      | 14    |
| <b>Sea—(See under Fishery.)</b>                                                                                                                                           |                 |          |       |
| <b>Sea-man—</b>                                                                                                                                                           |                 |          |       |
| —'s suit for wages ...                                                                                                                                                    | 101             | ...      | 444   |
| — is person engaged in navigating ships on high seas as opposed to waterman ...                                                                                           | 101             | <b>a</b> | 444   |
| <b>Secretary of State for India in Council—</b>                                                                                                                           |                 |          |       |
| Suit by, or in behalf of ...                                                                                                                                              | 149             | ...      | 603   |
| B. H. under IX of 1871 no difference between Government and subjects ...                                                                                                  | 149             | <b>a</b> | 603   |
| M. H. Execution applications by Government are governed by ordinary limitation ...                                                                                        | 149             | <b>a</b> | 603   |
| Saving clauses in XIV of 1859 inapplicable to suit against Government under IX of 1859 ...                                                                                | 149             | <b>b</b> | 603   |
| Time for suit for confiscated property runs from actual attachment ...                                                                                                    | 149             | <b>c</b> | 604   |
| List of confiscated houses is not proof of attachment ...                                                                                                                 | 149             | <b>c</b> | 604   |
| <b>Section—</b>                                                                                                                                                           |                 |          |       |
| Section 20 of C. P. C. of 1882 ...                                                                                                                                        | xiv             | ...      | 96    |
| <b>Seduction—(See under Service.)</b>                                                                                                                                     |                 |          |       |
| <b>Servant—(See Wages.)</b>                                                                                                                                               |                 |          |       |
| Teacher of fencing is not a ...                                                                                                                                           | 7               | <b>a</b> | 276   |
| Person entitled to sweep and supply flowers in temple is not, under 7 ...                                                                                                 | 7               | <b>b</b> | 276   |

|                                                                                                                                                                                               | Sec. or<br>Art. | Note. | Page.    |
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| <b>Service—</b>                                                                                                                                                                               |                 |       |          |
| Loss of, caused by seduction of servant or daughter ...                                                                                                                                       | 26              | ...   | 340      |
| Action is brought to repair the outrage done to parental feeling ...                                                                                                                          | 26              | a     | 340      |
| A master may sue for debauching his servant ...                                                                                                                                               | 26              | a     | 340      |
| A Hindu father might sue for loss of his abducted daughter's service ...                                                                                                                      | 26              | b     | 341      |
| Observations of Stuart. C. J., and Oldfield J., ...                                                                                                                                           | 26              | b     | 341      |
| <b>Servient owner—</b>                                                                                                                                                                        |                 |       |          |
| ———'s obligation is, that he shall not unreasonably narrow the road ...                                                                                                                       | xxvi            | s     | 230      |
| <b>Setting aside of instruments—</b> (See Article 91, 91),                                                                                                                                    |                 |       |          |
| <b>Set-off—</b>                                                                                                                                                                               |                 |       |          |
| Defendant's claim of damages as, against plaintiff's claim held to fall under 83 ...                                                                                                          | 83              | e     | 415      |
| <b>Share—</b>                                                                                                                                                                                 |                 |       |          |
| A divided member's suit to recover his, in money realized under a bond held not in common comes under 62 ...                                                                                  | 62              | c     | 385      |
| Suit for plaintiff's, of his ancestor's money drawn by his brother falls under 62 ...                                                                                                         | 62              | d     | 385      |
| Suit of one co-sharer for his, against another bound to recover arrears falls under 62 ...                                                                                                    | 62              | e     | 386      |
| Divided son's suit for his, of debt realized by father falls under 62 ...                                                                                                                     | 62              | f     | 386      |
| Suit by one of two decree-holders for his, against the assignee of the other falls under 62 ...                                                                                               | 62              | k     | 388      |
| Gift of the, of rent in profit held to amount to the gift of a, in the corpus of the estate ...                                                                                               | 123             | f     | 487, 488 |
| Two —s ordered to be withheld till sharers paid barred debts their ancestors owe to the estate ...                                                                                            | 123             | g     | 488      |
| Suit for, in land settled with original owner's heirs after confiscation by Government has 12 years from order for settlement ...                                                             | 144             | 2-k   | 577      |
| ——— in houses directed to be restored to original owners after confiscation should be dealt with as if there was no confiscation if defendant held possession at the time of confiscation ... | 144             | 2-k   | 578      |
| <b>Sheriff—</b>                                                                                                                                                                               |                 |       |          |
| Reversal of execution does not restore the, to the term but to the money by which he came by act of law ...                                                                                   | 12              | j     | 305      |
| <b>Signature—</b> (See Acknowledgment)                                                                                                                                                        |                 |       |          |
| <b>Singlebond—</b>                                                                                                                                                                            |                 |       |          |
| Suit on, where a day is specified for payment ...                                                                                                                                             | 66              | ...   | 400      |
| ——— expresses a single obligation without alternative condition ...                                                                                                                           | 66              | a     | 400      |
| ——— is a bill or written engagement for payment of money without penalty ...                                                                                                                  | 66              | b     | 400      |
| Suit on, where no day is specified ...                                                                                                                                                        | 67              | ...   | 402      |
| <b>Slander—</b>                                                                                                                                                                               |                 |       |          |
| Suit for compensation for ...                                                                                                                                                                 | 25              | ...   | 389      |
| Words of, which are in themselves actionable ...                                                                                                                                              | 25              | a     | 339      |

|                                                                                                                                                                               | Sec. or<br>Art. | Note. | Page.    |
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| <b>Slander—continued.</b>                                                                                                                                                     |                 |       |          |
| Words which are not actionable in themselves till special damage results ... ..                                                                                               | 25              | b     | 339      |
| — of title ... ..                                                                                                                                                             | 25              | b     | 340      |
| In such cases limitation runs from damage ... ..                                                                                                                              | 25              | c     | 340      |
| <b>Non (See also under share)</b>                                                                                                                                             |                 |       |          |
| —'s cause of action accrues when father's alienee takes possession of property ... ..                                                                                         | 126             | c     | 492      |
| Subsequent birth of a younger brother does not give a new cause of action ... ..                                                                                              | 126             | c     | 492      |
| <b>Special laws—</b>                                                                                                                                                          |                 |       |          |
| Of limitation saving of ... ..                                                                                                                                                | vi              | ...   | 37       |
| <b>Special Limitation—</b>                                                                                                                                                    |                 |       |          |
| C. H. section 5, applies to, provided by other acts ... ..                                                                                                                    | v               | d     | 30       |
| M. H. section 5, applies only to cases dealt with under the general Act of Limitation ... ..                                                                                  | v               | e     | 31       |
| C. H., section 5, applies to suit under Registration Act. — prescribed by special and Local Laws are not affected by Act XV of 1877 ... ..                                    | v               | f     | 31       |
| C. H. General Provisions of the Act of 1877 applies to cases for which, is provided for Local and Special Laws ... ..                                                         | vi              | ...   | 37       |
| B. H., also held so ... ..                                                                                                                                                    | vi              | a     | 37       |
| M. H., Village Munsif's suits are not excluded from XV of 1877 ... ..                                                                                                         | vi              | b     | 38       |
| C. H. Act IX of 1871 inapplicable to suits under XXV of 1857 and VIII of 1869 B. C. for relaxing the time allowed by them ... ..                                              | vi              | c     | 38       |
| A. H., section 16 Act IX of 1871 unapplicable to suit under Act XVIII of 1873 ... ..                                                                                          | vi              | d     | 39       |
| M. H. section 5 of Act IX of 1871 inapplicable to appeals under XXVIII of 1860 and VIII of 1865 ... ..                                                                        | vi              | e     | 39       |
| P. C. saving clauses as to minors &c., under Act XIV of 1859 inapplicable to a suit under Act IX of 1859 ... ..                                                               | vi              | f     | 40       |
| C. H. sections II and XII of Act XIV of 1859 to apply to limitation under section 246 of Act VIII of 1859. ... ..                                                             | vi              | g     | 40       |
| C. H. sections 11 and XII of Act XIV of 1859 to apply to limitation under section 246 of Act VIII of 1859. ... ..                                                             | vi              | h     | 41       |
| <b>Specific—</b>                                                                                                                                                              |                 |       |          |
| Moveables suit for ... ..                                                                                                                                                     | 48, 49          | ...   | 369, 370 |
| <b>Specific Performance—</b>                                                                                                                                                  |                 |       |          |
| — of a contract ... ..                                                                                                                                                        | 113             | ...   | 452      |
| Decree in, is discretionary and discretion is not arbitrary ... ..                                                                                                            | 113             | b     | 452, 453 |
| What delay may be fatal to a suit for ... ..                                                                                                                                  | 113             | c     | 453      |
| The principle is an important one to be considered by court in the exercise of judicial discretion ... ..                                                                     | 113             | c     | 453      |
| C. H. Suit brought in 1876 to enforce agreement of 1858 refused in 1874 held not barred ... ..                                                                                | 113             | d     | 453      |
| Suit brought in 1874 to enforce agreement of 1860 the condition precedent of which was performed in 1862 held not barred as defendant refused only shortly before suit ... .. | 113             | e     | 453, 454 |
| Plaintiffs were not disentitled to relief by delay ... ..                                                                                                                     | 113             | e     | 454      |
| Suit for, of contract of sale and possession is governed by 113 ... ..                                                                                                        | 113             | e     | 454      |

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**Specific Performance—continued.**

|                                                                                                                                               |     |   |     |
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| Relief by giving possession being confused in relief by, of contract if latter relief is barred, suit for possession cannot be maintained ... | 113 | f | 455 |
| Vendee's suit for possession does not fall under 113: ...                                                                                     | 113 | g | 455 |
| Suit on a registered award for money is one for ...                                                                                           | 113 | h | 455 |
| Specific relief Act places awards on the same footing as contracts for the purposes of chapter II of that Act ...                             | 113 | h | 455 |
| If demand from plaintiff is a condition, cause of action accrues only on demand ...                                                           | 113 | i | 456 |

**Specific Relief Act—**

|                                                                                                                                          |   |     |     |
|------------------------------------------------------------------------------------------------------------------------------------------|---|-----|-----|
| Suit under section 9 of, for possession of real property. Section 9 of, is intended to restore possession without reference to title ... | 3 | ... | 273 |
| Its object is to prohibit breaches of the peace ...                                                                                      | 3 | a   | 273 |
| Carrying away crops is, not dispossession when lease was for payment of rent ...                                                         | 3 | b   | 273 |

**Stake-fishing—(See also under Fishery.)**

|                                                                                   |      |     |     |
|-----------------------------------------------------------------------------------|------|-----|-----|
| The facts of the case relating to ...                                             | xxvi | 2-q | 249 |
| System of, along Malabar coast is ancient ...                                     | xxvi | 2-q | 250 |
| English Law deems, a private mode of fishing inconsistent with common fishery ... | xxvi | 2-q | 250 |

**Starting Point—**

|                                                                                          |    |      |     |
|------------------------------------------------------------------------------------------|----|------|-----|
| Decision under 3 or dispossession under such decision does not give a fresh ...          | 3  | f    | 274 |
| Sale after dismissal of claim does not give unsuccessful claimant a fresh ...            | 11 | v, w | 301 |
| Reversal of decree under which property was sold does not give a fresh, to defendant ... | 12 | i    | 305 |

**Statute—**

|                                                          |      |     |     |
|----------------------------------------------------------|------|-----|-----|
| Repeal of, cannot take away vested rights ...            | i    | d   | 7   |
| — is remedial and neither prohibitive nor exhaustive ... | xxvi | y   | 235 |
| Suit for penalty under ...                               | 6    | ... | 276 |

**Statute of frauds—**

|                                                                                                                          |    |   |     |
|--------------------------------------------------------------------------------------------------------------------------|----|---|-----|
| — requires a contract which is not to be performed within 3 years to be in writing ...                                   | 57 | a | 376 |
| In India people are at liberty to make any verbal contract which the Legislature could not have intended to prohibit ... | 57 | a | 377 |

**Steam Navigation Company—(See also under Carrier)**

|                                                                                                                                                              |     |   |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---|-----|
| Though, are not common carriers for the purposes of The Indian Carrier's Act they are common carriers so long as goods remain in their hands undelivered ... | 115 | d | 459 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---|-----|

**Sub-Judge—**

|                                                                           |   |   |    |
|---------------------------------------------------------------------------|---|---|----|
| — cannot over-ride District Judge's order admitting appeal after time ... | v | q | 34 |
|---------------------------------------------------------------------------|---|---|----|

**Substantive Law—**

|                                                                     |   |   |   |
|---------------------------------------------------------------------|---|---|---|
| In matters of, Statute in force at the arising of right governs ... | i | a | 5 |
|---------------------------------------------------------------------|---|---|---|



|                                                                                                                                           | Sec. or<br>Art. | Note. | Page.  |
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EACB.  
4/17/08.

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